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GOVERNING COUNCIL

# REPORT AND RECOMMENDATIONS MADE BY THE PANEL OF COMMISSIONERS CONCERNING THE THIRD INSTALMENT OF "E1" CLAIMS

GE.99-63278

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## List of claimants

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|---|---|
| Genoyer SA | "Genoyer" |
| Mitsubishi Corporation | "Mitsubishi" |
| Dowell Schlumberger(Middle East) Inc. | "Dowell" |
| Shafi Bin Jaber & Bros Co. | "Shafco" |
| Cape East Limited | "Cape" |
| Halliburton Company | "Halliburton Company" |
| Halliburton Geophysical Services, Inc. | "Halliburton Geophysical" |
| Halliburton Logging Services, Inc. | "Halliburton Logging" |
| Otis Engineering Corporation | "Otis Engineering" |
| Halliburton Limited | "Halliburton Limited" |
| Wood Group Engineering Limited | "Wood Group" |
| Dresser industries, Inc. | "Dresser" |
| National-Oilwell | "NOW" |
| OGE Drilling, Inc. | "OGE" |

## List of currencies

| Name | Defined |
|---|---|
| French Franc | FF |
| Iraqi Dinar | ID |
| Kuwait Dinar | KD |
| Pound Sterling | £ stg. |
| Saudi Arabian Riyal | SR1 |
| United States Dollar | US$ |
| Japanese Yen | yen |
| United Arab Emirates dirham | Dh |

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## Introduction

1. This is the third report to the Governing Council of the United Nations Compensation Commission (the "Commission") by the Panel of Commissioners (the "Panel") appointed to review oil sector claims submitted by corporations, other private legal entities and public-sector enterprises (category "E1" claims), pursuant to article 38(e) of the Provisional Rules for Claims Procedure 1/(the "Rules").

2. This report contains the determinations and recommendations of the Panel with respect to the third instalment of E1 claims, comprising 14 claims submitted to the Panel by the Executive Secretary of the Commission pursuant to article 32 of the Rules (the "Third Instalment").

3. The Third Instalment claims are all filed by non-Kuwaiti private corporations operating in the business of oil field service and supply. The claimants in this instalment typically advance a number of loss elements arising from the disruption of their oil field service and supply business, and the destruction of assets used in that business. Accordingly, while a number of individual loss elements fall outside this core enterprise, the Third Instalment deals predominantly with oil field service and supply losses.

4. The claimants in the Third Instalment are as follows:

Table 1. Summary of third instalment claimants

| Name of claimant | Submitting country | UNCC claim No. |
|---|---|---|
| Genoyer SA | France | 4001841 |
| Mitsubishi Corporation | Japan | 4000979 |
| Dowell Schlumberger (Middle East) Inc. | Panama | 4001207 |
| Shafi Bin Jaber & Bros Co. | Saudi Arabia | 4002548 |
| Cape East Limited | United Kingdom | 4002145 |
| Halliburton Company | United States | 4002232 |
| Halliburton Geophysical Services, Inc. | United States | 4002233 |
| Halliburton Logging Services, Inc. | United States | 4992234 |
| Otis Engineering Corporation | United States | 4002251 |
| Halliburton Limited | United Kingdom | 4002135 |
| Wood Group Engineering Limited | United Kingdom | 4002037 |
| Dresser Industries, Inc. | United States | 4002503 |
| National-Oilwell | United States | 4002565 |
| OGE Drilling, Inc. | United States | 4002567 |

5. A number of claimants have sought compensation for interest on amounts claimed, and for claim preparation costs. As these issues are dealt with separately (see section XIII, infra), the body of this report deals with the claims net of interest and claim preparation costs. The original and net amounts claimed in the third instalment are summarized as follows:

Table 2. Summary of third instalment claims

| Claimant | | Gross Claim | Preparation cost | Interest | Net Claim |
|---|---|---|---|---|---|
| Genoyer | (FF) | 67,535,458 | | | 67,535,458 |
| | (US$) | 289,553 | | | 289,553 |
| | (ID) | 8,424,477 | | | 8,424,477 |
| Mitsubishi | (yen) | 12,968,598,047 | | | 12,968,598,047 |
| | (US$) | 6,581,436 | | | 6,581,436 |
| Dowell | (US$) | 1,591,315 | | | 1,591,315 |
| Shafco | (SRl) | 40,278,848 | 82,850 | 8,925,370 | 31,270,628 |
| Cape | (US$) | 759,000 | | | 759,000 |
| | (£ stg.) | 50,096 | | | 50,096 |
| | (KD) | 10,465 | | | 10,465 |
| Halliburton Company | (US$) | 1,633,109 | 10,645 | 167,915 | 1,454,549 |
| Halliburton Geophysical | (US$) | 14,389,953 | 32,071 | 1,670,294 | 12,687,588 |
| Halliburton Logging | (US$) | 4,455,234 | 41,389 | 423,409 | 3,990,436 |
| Otis Engineering | (US$) | 6,696,537 | 24,510 | 962,862 | 5,709,165 |
| Halliburton Limited | (US$) | 13,160,208 | 73,187 | 1,326,346 | 11,760,675 |
| Wood Group | (KD) | 244,853 | | | 244,853 |
| | (£ stg.) | 185,740 | | | 185,740 |
| Dresser | (US$) | 342,819 | | | 342,819 |
| NOW | (US$) | 1,531,428 | | | 1,531,428 |
| OGE | (US$) | 425,213 | 9,302 | | 415,911 |
| Totals | (FF) | 67,535,458 | | | 67,535,458 |
| | (US$) | 51,855,805 | 191,104 | 4,550,826 | 47,113,875 |
| | (ID) | 8,424,477 | | | 8,424,477 |
| | (yen) | 12,968,598,047 | | | 12,968,598,047 |
| | (SRl) | 40,278,848 | 82,850 | 8,925,370 | 31,270,628 |
| | (£ stg.) | 235,836 | | | 235,836 |
| | (KD) | 255,318 | | | 255,318 |

6. Five of the above claims were filed by related corporations, those being Halliburton Limited, Halliburton Company, Halliburton Geophysical Services, Inc., Halliburton Logging Services, Inc. and Otis Engineering Corporation (all collectively referred to in this report as the "Halliburton Claimants"). The Halliburton Claimants, with the exception of Halliburton Limited, subsequently merged into a single corporation under the name Halliburton Energy Services, Inc. As the Halliburton Claimants are related and have advanced similar claims, with similar forms of proof and overlapping documentation, these claims will be considered together in this report.

## I. PROCEDURAL HISTORY OF THE CLAIMS

7. The secretariat of the Commission (the "secretariat") commenced a detailed review of the Third Instalment claims in May 1998. As a result of this review, a number of formal deficiencies in the claim files were identified, as were a number of areas where further documentation or information would clearly be required from the claimants. Accordingly, detailed notifications with respect to these deficiencies were issued by the secretariat to each of the claimants in the Third Instalment pursuant to article 34 of the Rules (the "Article 34 Notifications").

8. As a result of the technical nature of a number of the loss elements in the Third Instalment, independent loss adjusting and accounting experts were then retained to assist the secretariat and the Panel in their further review and evaluation of these claims.

9. The Panel issued its first Procedural Orders relating to the Third Instalment on 3 September 1998. These Procedural Orders also contained detailed interrogatories addressed to each of the Third Instalment claimants, seeking further evidence, explanation and in some cases legal argument. These interrogatories were prepared by the Panel based on its review of the claims, with the assistance of the secretariat and the expert consultants. The Procedural Orders contained a deadline of 30 October 1998 for responses to the interrogatories.

10. At the direction of the Panel, copies of the Procedural Orders, with the attached interrogatories, were sent by the secretariat to the Government of the Republic of Iraq.

11. In some instances, the secretariat issued further information requests to claimants as supplementary Article 34 Notifications. Similarly, the Panel specifically directed supplementary interrogatories to a number of the claimants.

12. After reviewing the claims, the claimants' responses to the Article 34 Notifications and the claimants' responses to interrogatories, the Panel

directed the expert consultants to prepare a preliminary report for each of the Third Instalment claims outlining their opinions on the appropriate valuation of compensable claim elements. This work was undertaken by the consultants with the close cooperation of the secretariat. The Panel reviewed these preliminary reports, and provided further instructions to the consultants and the secretariat as necessary. The consultants then prepared final reports, under the supervision of the secretariat. Those final reports assisted the Panel in performing its work and making the recommendations outlined in this report.

## II. LEGAL FRAMEWORK

### A. Applicable law and criteria

13. The law to be applied by the Panel is set out in article 31 of the Rules, which provides as follows:

> "In considering the claims, Commissioners will apply Security Council resolution 687 (1991) and other relevant Security Council resolutions, the criteria established by the Governing Council for particular categories of claims, and any pertinent decisions of the Governing Council. In addition, where necessary, Commissioners shall apply other relevant rules of international law."

### B. Liability of Iraq

14. According to paragraph 16 of Security Council resolution 687 (1991), "Iraq, without prejudice to the debts and obligations of Iraq arising prior to 2 August 1990, which will be addressed through the normal mechanisms, is liable under international law for any direct loss, damage,... or injury to foreign Governments, nationals and corporations, as a result of Iraq's unlawful invasion and occupation of Kuwait". The Panel notes that, when making resolution 687 (1991), the Security Council acted under Chapter VII of the United Nations Charter, which permits it to exercise its powers under that Chapter to maintain and restore international peace and security. The Security Council also acted under Chapter VII and under Article 29 of the United Nations Charter when making resolution 692 (1991), in which it decided to establish the Commission and the Compensation Fund referred to in paragraph 18 of resolution 687 (1991). Given these provisions, the issue of Iraq's liability for losses falling within the Commission's jurisdiction is resolved by the Security Council, and is not subject to review by the Panel.

15. The Governing Council has given some further guidance on what constitutes "direct loss, damage or injury" for which Iraq is liable under Security Council resolution 687 (1991). Paragraph 21 of Governing Council decision 7 is the seminal rule on "directness" for claims filed on behalf

of corporations and other legal entities (category "E" claims), and it provides, in relevant part, that compensation is available:

> "... with respect to any direct loss, damage, or injury to corporations and other entities as a result of Iraq's unlawful invasion and occupation of Kuwait. This will include any loss suffered as a result of:
>
> (a) Military operations or threat of military action by either side during the period 2 August 1990 to 2 March 1991;
>
> (b) Departure of persons from or their inability to leave Iraq or Kuwait (or a decision not to return) during that period;
>
> (c) Actions by officials, employees or agents of the Government of Iraq or its controlled entities during that period in connection with the invasion or occupation;
>
> (d) The breakdown of civil order in Kuwait or Iraq during that period; or
>
> (e) Hostage-taking or other illegal detention." 2/

16. The list of possible causes of "direct loss" in paragraph 21 is not exhaustive and leaves open the possibility that there may be causes other than those enumerated. Decision 15 of the Governing Council confirms this: "[t]here will be other situations where evidence can be produced showing claims are for direct loss, damage or injury as a result of Iraq's unlawful invasion and occupation of Kuwait". 3/ Should that be the case, the claimants will have to show that a loss which was not suffered as a result of one of the five categories of events in paragraph 21 is nevertheless a "direct" result of Iraq's unlawful invasion and occupation of Kuwait.

17. While the language "as a result of" contained in paragraph 21 is not defined further in decision 7, Governing Council decision 9 provides guidance as to what may be considered to constitute "losses suffered as a result of" Iraq's unlawful invasion and occupation of Kuwait. 4/

18. Thus, decisions 7 and 9 provide guidance to the Panel as to how the "direct loss" requirement must be interpreted. It is against this background that the Panel will examine the claims discussed in this report to determine whether, with respect to each, the requisite causal link - a "direct loss" - is present.

C. Jurisdiction

19. With respect to the clause in paragraph 16 of Security Council resolution 687 (1991) relating to the debts and obligations of Iraq " .... arising prior to 2 August 1990 ...", the Panel refers to the report and recommendations made by the Panel of Commissioners concerning the first instalment of "E2" Claims (S/AC.26/1998/7) (the "E2 Report") wherein that Panel (the "'E2' Panel") concluded that the "arising prior to" clause was intended to exclude from the jurisdiction of the Commission the foreign debt of Iraq that existed at the time of Iraq's 2 August 1990 invasion of Kuwait. Having studied the normal business practices in Iraq prior to that country's accumulation of a significant amount of foreign debt during the course of the Iran-Iraq War (1980-1988), the "E2" Panel concluded that foreign contracting parties operating in Iraq at that time could generally expect to be paid within one to three months of the performance of its obligation.

20. The "E2" Panel therefore found that:

> "In the case of contracts with Iraq, where the performance giving rise to the original debt had been rendered by a claimant more than three months prior to 2 August 1990, that is, prior to 2 May 1990, claims based on payments owed, in kind or in cash, for such performance are outside of the jurisdiction of the Commission as claims for debts or obligations arising prior to 2 August 1990." ("E2" Report, para. 90).

21. The "E2" Panel applied the above-referenced finding to specific factual situations including claims based on deferred payment arrangements where the Panel concluded that, regardless of whether deferred payment arrangements may have created new debts and obligations on the part of Iraq under a particular legal system, they did not do so for the purposes of resolution 687 (1991). Accordingly, the "E2" Panel concluded that such claims based on deferred payment arrangements do not constitute new debts as of their date that are separate and distinct from the original contracts and are therefore outside the jurisdiction of the Commission.

22. The "E2" Panel also considered claims where the claimants shipped goods to Iraq pursuant to contracts entered into prior to 2 August 1990. In such cases, "performance" was taken to mean the delivery of goods pursuant to the terms of the contracts. Applying the "arising prior to" clause, the "E2" Panel found that:

> "[W]here claimants had completed performance (i.e., delivered the goods, as evidenced by appropriate documentation) more than three months prior to 2 August 1990, claims for the recovery of amounts owed by Iraq for that performance shall be considered to have arisen

> prior to 2 August 1990 and, as such, are outside the jurisdiction of this Commission. In cases where deliveries of goods were made within three months prior to 2 August 1990, claims for compensation for amounts owed by Iraq for such performance meet the 'arising prior' to test". ("E2" Report, para. 105)

23. The Panel has analysed the "E2" Panel's findings and adopts its conclusions for the purposes of the review of these claims. Accordingly, the Panel finds that the terms "debts and obligations of Iraq arising prior to 2 August 1990" means a debt or an obligation that is based on work performed or services rendered prior to 2 May 1990.

24. Further, the Panel notes that the debts and obligations that are affected by the "arising prior to" clause are debts and obligations of Iraq. The Panel has reviewed the "E2" Report where a definition of the word "Iraq" is offered. Specifically, the "E2" Panel concluded that "Iraq" means:

> "... the Government of Iraq, its political subdivisions, or any agency ministry, instrumentality or entity (notably public sector enterprises) controlled by the Government of Iraq". ("E2" Report, para. 116)

25. The Panel adopts this definition of the word "Iraq" in interpreting Governing Council resolutions, and Security Council resolution 687 (1991) as well. Accordingly, where the Panel has in this Report excluded claims or portions thereof on the basis that they are debts or obligations "of Iraq" arising prior to 2 August 1990, the Panel specifically finds that the debtor or obligor is the Government of Iraq, one of its political subdivisions, or any agency, ministry, instrumentality or entity controlled by the Government of Iraq.

26. The Panel wishes to reiterate that, although it is true that during the occupation of Kuwait, Iraq purported to repudiate certain debts, which may include the claims discussed within this Report, it follows from paragraph 17 of Security Council resolution 687 (1991) and Iraq's acceptance thereof that such repudiation is without effect and that such debts still exist.

27. The Panel also emphasizes that in reviewing such claims before it, which are within its jurisdiction, the Panel will analyse the claims in the light of the particular, relevant facts and circumstances of each claim, in particular, with respect to the question whether, as required in paragraph 16 of resolution 687 (1991), there is a direct loss resulting from Iraq's unlawful invasion and occupation of Kuwait. The Panel will be particularly watchful for claims wherein the claimants may be able to demonstrate a long

standing practice, dating back prior to 1980, of granting Iraqi buyers and contract parties long or deferred payment terms.

## D. Evidentiary requirements

28. Article 35(1) of the Rules provides a general guidance on the submission of evidence by a claimant:

> "Each claimant is responsible for submitting documents and other evidence which demonstrate satisfactorily that a particular claim or group of claims is eligible for compensation pursuant to Security Council resolution 687 (1991)."

29. Pursuant to article 35(3) of the Rules, corporate claims must be supported by documentary and other appropriate evidence sufficient to demonstrate the circumstances and amount of the claimed loss. The Governing Council has made it clear that with respect to business losses there "will be a need for detailed factual descriptions of the circumstances of the claimed loss, damage or injury" in order for compensation to be awarded. 5/

30. All corporations filing category "E" claims were required to submit with their claim forms "a separate statement explaining its claim ('Statement of Claim'), supported by documentary and other appropriate evidence sufficient to demonstrate the circumstances and the amount of the claimed loss". 6/ In addition, claimants were instructed to include in the Statement of Claim the following particulars:

> "(a) The date, type and basis of the Commission's jurisdiction for each element of loss;
>
> (b) The facts supporting the claim;
>
> (c) The legal basis for each element of the claim;
>
> (d) The amount of compensation sought, and an explanation of how this amount was arrived at." 7/

31. Where claimants have submitted a statement of claim meeting the Commission's requirements and the statement is supported by documentary or other appropriate evidence, article 35, paragraph 1 of the Rules requires the Panel to "determine the admissibility, relevance, materiality and weight" of such evidence. In so evaluating the evidence before it, the Panel must determine whether it is sufficient to demonstrate the circumstances and amount of the claimed loss.

32. The Panel uses the term "overstated" in this report to convey only that it disagrees with a claimant's stated claim amount and that, in its opinion, the claimed amount as stated is larger than the amount supported by the evidence.

# III. CLAIM OF GENOYER SA

33. Genoyer SA ("Genoyer") is incorporated in France, and is a member of a group of companies engaged in the manufacture and supply of products for the oil and gas industry throughout the world. Genoyer had various contractual relationships with customers in Iraq. Genoyer advances several claims arising from the interruption of these contractual relationships as a result of Iraq's unlawful invasion and occupation of Kuwait. These net claims can be summarized as follows:

Table 3. Genoyer net claims

| Loss element | Claim (FF) | Claim (US$) | Claim (ID) |
|---|---|---|---|
| Unpaid invoices | 2,323,381 | | |
| Unpaid letters of credit | 1,198,979 | 289,553 | |
| Bank account in Iraq | | | 8,424,477 |
| Retention claims | 588,797 | | |
| Other contract losses | 62,966,557 | | |
| Compensation paid to others | 457,744 | | |
| Total | 67,535,458 | 289,553 | 8,424,477 |

A. Unpaid invoices

34. Genoyer advances a claim based on unpaid invoices issued to Iraq Northern Oil Company ("INOC") in the amount of FF 625,228. In support Genoyer provides an extract from its books of account showing depreciation of the claimed amount in 1988, and a statement that the claimed amount has been approved by the claimant's auditors. Similarly, Genoyer claims FF 1,698,153 for non-payment of another claim against INOC. In total, Genoyer claims FF 2,323,381 for unpaid invoices issued to INOC. In support, Genoyer provides correspondence from 1987.

35. The Panel finds that the evidence in support of these claims is insufficient to assess whether these claims are within the jurisdiction of the Commission, or to support an award of any compensation. Specifically, the claims were initially advanced by Genoyer against INOC in 1987 and 1988, and the depreciation may or may not be related to the invoices to INOC, which themselves were not provided. Further, it is not apparent to the Panel that the FF 1,698,153 figure advanced by Genoyer was an amount agreed by INOC.

36. For the reasons outlined above, the Panel recommends no compensation for Genoyer's claims based on invoices allegedly unpaid by INOC.

B. Unpaid letters of credit

37. Genoyer also claims for the non-payment of two letters of credit by Rafidain Bank of Iraq, a bank owned by the State of Iraq. The letters of credit were secured in 1989 to provide payment in November 1990 and January 1991, being 360 days after the delivery of goods. The letters of credit are in the amount of FF 1,154,597 and US$289,553. In support of its claim with respect to these letters of credit, Genoyer has provided to the Commission copies of the letters of credit and the underlying invoices, and related correspondence and telexes with respect to the amounts due. Genoyer has also provided documentation outlining its unsuccessful attempts to recover these claims on the outstanding letters of credit.

38. With the assistance of its consultants, the Panel has determined that the underlying invoices total the amounts claimed. The Panel finds that Rafidain Bank only confirmed for payment the amount of FF 1,092,867 on the first letter of credit. The documentation confirms to the satisfaction of the Panel that the full amount of the second letter of credit was payable in 1991.

39. The Panel's first task is to determine whether the letters of credit are within the jurisdiction of the Commission. Because the letters of credit are a contractual obligation created prior to Iraq's unlawful invasion and occupation of Kuwait, the Panel must determine, as a threshold matter, (1) whether the claim is a debt or an obligation of Iraq and (2) whether it falls within the meaning of the "arising prior to 2 August 1990" limitation imposed by article 16 of Security Council resolution 687 (1991).

40. The Panel finds that the Rafidain Bank letters of credit in favour of Genoyer are debts of Iraq within the meaning of Security Council resolution 687 (1991).

41. Next, the Panel must determine when these debts arose, and specifically whether these debts arose prior to 2 August 1990, as discussed in section II.C., supra.

42. The Panel finds that Genoyer performed its obligation to deliver goods, and all of its obligations under the letters of credit, in 1989. As this performance occurred prior to 2 May 1990, the Panel finds that the debt or obligation of Iraq arose prior to 2 August 1990 within the meaning of paragraph 16 of resolution 687 (1991). As a result, the claim arising from the letters of credit is outside the jurisdiction of the Commission.

43. Genoyer also claims a total of FF 44,382 for advising bank charges and commissions incurred in France with respect to the unpaid letters of credit. In support Genoyer provides correspondence from the advising banks and evidence of payment of the amounts claimed.

44. The Panel finds that these advising bank fees are ancillary to the letters of credit themselves, and are therefore also outside the jurisdiction of the Commission. As a result, the Panel recommends no compensation to Genoyer for advising bank fees.

45. In summary, the Panel recommends no award to Genoyer for the letters of credit, and for the advising bank fees.

C. Bank account in Iraq

46. Genoyer also alleges that it has a bank account with Rafidain Bank in Iraq with a balance of 8,424,477 Iraqi dinars, and that it has lost access to these funds as a result of Iraq's unlawful invasion and occupation of Kuwait. In support, Genoyer has provided a document stating the claimed balance in an account held by a Genoyer subsidiary.

47. The Panel notes that Genoyer has provided no evidence that the funds held on deposit in Iraq have been "expropriated, removed, stolen or destroyed"; furthermore the Panel notes that these Iraqi dinar funds have at all relevant times been non-transferable and non-exchangeable. As such, the Panel finds that Genoyer has suffered no compensable loss with respect to funds held on deposit in Iraq. In this regard, the Panel refers to the E2 Report, wherein the "E2" Panel recommended the rejection of a claim for compensation related to a bank account in Iraq; the Panel specifically adopts the reasoning contained in paragraphs 136-140 of that report.

48. Accordingly, the Panel recommends that no compensation be awarded with respect to this loss element.

D. Retention claims

49. Genoyer claims that two retention amounts remain outstanding from a French contractor Technip Geoproduction ("Technip"), as a result of Iraq's unlawful invasion and occupation of Kuwait. Genoyer suggests that Technip was unpaid, and has therefore not paid Genoyer the retention amounts of FF 156,227 and FF 432,570. The documents provided to the Commission confirm that the first amount is undisputed by Technip, while the second amount is substantially undocumented. Both amounts relate to the Khabaz oil field development project in Iraq.

50. The Panel finds that Technip continues to be an active company which is able to meet its obligations. The Panel is satisfied that, to the extent Genoyer has a valid retention claim, it is a claim to be advanced against Technip. As Genoyer has such a claim, which must be determined on its own merits as against an existing and viable company, the non-payment of the retention claims to date cannot be considered to be a direct consequence of Iraq's unlawful invasion and occupation of Kuwait. The

Panel notes that Technip has filed its own claim with the Commission, which claim will be considered by this Panel in a later instalment.

51. Accordingly, the Panel recommends no compensation for Genoyer's retention claims.

## E. Other contract losses

### 1. Ball valves contract

52. Genoyer claims FF 45,972,000 as losses resulting from a contract with the Iraq State Enterprise for Mechanical Industries for the sale of technology for the manufacture of ball valves. The claim is for the full contract amount. The contract was signed on 1 March 1990, with a term of 15 months, but the commencement date for this 15 month period is unclear.

53. Despite requests from the secretariat and the Panel, Genoyer has provided no evidence which would allow the Panel to assess any losses flowing from this ball valves contract. Furthermore, the contract is by its own terms subject to several conditions precedent, including approval of the "employer's" higher authorities, receipt by the contractor of a down payment, and the opening of a letter of credit. There is no evidence that any of these conditions precedent were met or that they could not have been met as a result of Iraq's unlawful invasion and occupation of Kuwait. Accordingly, the Panel recommends no compensation arising from this element of the claim.

54. Genoyer advances a further claim for FF 13,194,557 as "direct prejudice" arising from work not progressing on the ball valves contract. In support there is one document entitled "Estimation of Prejudice on Several Contracts" leading to a total of FF 13,194,557. The method of calculating this total is not stated by Genoyer, and no documentation has been provided to the Commission that would enable the Panel to verify or assess this loss.

55. The Panel finds that the further claim for "direct prejudice" arising from the ball valves contract must fail for the same reasons as the claim for the full contract amount (see para. 53, supra).

56. Accordingly, the Panel recommends that no compensation be awarded with respect to this loss element.

2. Walthon Wier contract

57. Genoyer claims that an unaffiliated company, Walthon Wier Pacific SA ("Walthon Wier") entered into an agreement with the Iraq State Enterprise for Mechanical Industries on 15 February 1990. Genoyer claims that it had a contractual entitlement to receive from Walton Wier a commission of 10 per cent on such contracts, based on a representation agreement between Genoyer and Walthon Wier. Genoyer further claims that the Walthon Wier contract did not proceed as a result of Iraq's invasion and occupation of Kuwait, and that it therefore suffered a loss of its anticipated commission in the amount of FF 3,800,000. 8/

58. The Panel notes that the Walthon Wier contract with the Iraq State Enterprise for Mechanical Industries contains several conditions precedent identical to those in the ball valves contract (discussed above), including approval of the "employer's" higher authorities, receipt by the contractor of a down payment, and the opening of a letter of credit. There is no evidence that any of these conditions precedent were met or that they could not have been met as a result of Iraq's invasion and occupation of Kuwait. Accordingly, the Panel recommends no compensation arising from this element of the claim.

F. Compensation paid to others

59. Genoyer claims that two of its employees were held against their will in Iraq after Iraq's invasion and occupation of Kuwait, and that Genoyer incurred salary costs and other expenses with respect to these employees until they were released in October 1990. Genoyer claims a total of FF 457,744 with respect to these expenses. In response to a question from the Panel, Genoyer provided a schedule of costs totalling FF 391,619. Genoyer also seeks US$12,800 for expenses in Iraq. Genoyer has not reconciled these figures.

60. Despite requests from the secretariat and later from the Panel, the majority of Genoyer's claimed expenses are completely unsupported by any underlying receipts, vouchers or other documentation. The claimant has further provided two receipts for air travel prior to Iraq's invasion and occupation of Kuwait, without explanation. The Panel finds that the claim for undocumented expenses, and the claim for air travel prior to Iraq's unlawful invasion and occupation of Kuwait, must both fail on evidentiary grounds.

61. Genoyer has finally provided a receipt for FF 566 for the cost of air travel for one of the two employees held in Iraq, and a telex confirming payment of US$12,800 by Genoyer for expenses and accommodation for the two employees in Iraq during their detention. The Panel finds that these two expenses have been adequately documented, and the Panel finds that these expenses were incurred as a direct result of Iraq's unlawful invasion and

occupation of Kuwait. Accordingly, the Panel recommends an award of the United States dollar equivalent of FF 566, plus US$12,800, for compensation and expenses paid by Genoyer to others.

## G. Recommended award

62. The recommendations of the Panel can be summarized as follows:

Table 4. Genoyer recommended compensation

| Loss element | | Claim | Recommendation (Original currency) | Recommendation (US$) |
|---|---|---|---|---|
| Unpaid invoices | (FF) | 2,323,381 | 0 | 0 |
| Unpaid letters of credit | (FF) | 1,198,979 | 0 | 0 |
| Unpaid letters of credit | (US$) | 289,553 | 0 | 0 |
| Bank account in Iraq | (ID) | 8,424,477 | 0 | 0 |
| Retention claims | (FF) | 588,797 | 0 | 0 |
| Other contract losses | (FF) | 62,966,557 | 0 | 0 |
| Compensation paid to others | (FF) | 457,744 | 566 | 111 |
| Compensation paid to others | (US$) | | 12,800 | 12,800 |
| Totals | (FF) | 67,535,458 | 566 | 111 |
| | (US$) | 289,553 | 12,800 | 12,800 |
| | (ID) | 8,424,477 | 0 | 0 |
| Total recommendation (US$) | | | | 12,911 |

## IV. CLAIM OF MITSUBISHI CORPORATION

63. Mitsubishi Corporation ("Mitsubishi"), a publicly-held corporation organized under the laws of Japan, is a large industrial conglomerate which operates in, among other areas, the oil field service and supply business. Mitsubishi had extensive commercial relations with numerous customers in Iraq, Kuwait and surrounding countries prior to Iraq's unlawful invasion and occupation of Kuwait; these included several supply contracts with Iraqi state-owned corporations in the oil, gas and fertilizer sectors and contracts for the export of textiles from Japan to Kuwait.

64. Mitsubishi seeks compensation in the amount of US$6,581,436 and yen 12,968,598,047, net of interest and claim preparation costs, for losses suffered as a result of Iraq's unlawful invasion and occupation of Kuwait. The largest portion of such claimed loss, whether considered in terms of monetary amount or number of loss elements, arises from alleged disruptions of Mitsubishi's oil field service and supply business.

65. The claimed loss is composed of twenty-nine individual loss elements, each of which has been assigned a number by Mitsubishi; for ease of reference, such numbering has been retained in this report. The Panel notes, however, that loss element 3 of Mitsubishi's claim will not be considered in this report. Due to the fact that loss element 3 does not arise from Mitsubishi's oil field service and supply business and presents significant factual similarities to an instalment of claims that will be considered by the "E2" Panel, it has been reallocated, pursuant to article 32(3) of the Rules, to the "E2" Panel for resolution as a separate claim.

66. Mitsubishi's claim can be summarized as follows:

Table 5. Mitsubishi net claims

| Claim no. | Claim (US$) | Claim (yen) |
|---|---|---|
| 1 | | 169,450,232 |
| 2 | | 2,146,000 |
| 3 | | 199,940,000* |
| 4 | 3,318 | |
| 5 | 48,052 | |
| 6 | 164,898 | |
| 7 | 830,667 | 121,037,617 |
| 8 | 1,837,629 | 117,622,219 |
| 9 | 372,469 | |
| 10 | | 12,109,546,442 |
| 11 | | 120,718,951 |
| 12 | | 30,063,966 |
| 13 | | 66,000 |
| 14 | | 9,816,000 |
| 15 | | 4,567,200 |
| 16 | | 1,900,000 |
| 17 | | 47,986,600 |
| 18 | | 32,177,870 |
| 19 | | 1,040,185 |
| 20 | 2,404 | 45,612 |
| 21 | 1,813 | 46,124 |
| 22 | 2,208 | 46,160 |
| 23 | 21,644 | |
| 24 | 7,350 | 152,860 |
| 25 | 4,758 | 81,267 |
| 26 | 3,639 | |
| 27 | 3,645 | 146,742 |
| 28 | 7,898 | |
| 29 | 3,269,044 | |
| Total | 6,581,436 | 12,968,598,047 |

* As discussed in para. 65, above, loss element 3 will not be considered in this report. It will be reviewed by the "E2" Panel as a separate claim.

67. Because there are significant similarities among the loss elements advanced by Mitsubishi, these will be presented and analysed in this report by loss type.

A. Losses for repatriation of employees and their families

68. In loss element 1, Mitsubishi claims that it incurred expenses to evacuate employees and families of employees that were stationed in Iraq, Kuwait, Saudi Arabia and other countries in the neighbouring region at the time of Iraq's invasion of Kuwait. Further expenses were allegedly incurred to compensate employees for household goods and personal effects

stolen or damaged in Iraq and Kuwait. Mitsubishi seeks compensation in the amount of yen 169,450,232 for loss element 1. Of such amount, yen 46,146,777 represents evacuation expenses and yen 123,303,455 represents compensation for property left in Iraq and Kuwait by Mitsubishi employees.

1. Evacuation expenses

69. Mitsubishi claims that, due to Iraq's unlawful invasion and occupation of Kuwait, it had to evacuate 237 employees and dependants of employees from Iraq, Kuwait, Saudi Arabia and other countries in the Persian Gulf region and the Middle East. Of such persons, 72 were evacuated from Iraq and Kuwait, 78 from Saudi Arabia and 87 from Turkey and countries in the Middle East other than Iraq, Kuwait and Saudi Arabia. Mitsubishi seeks compensation in the amount of yen 46,146,777 for the resulting evacuation expenses, which include air fares from the relevant countries and other transportation costs.

70. In support of this part of its claim, Mitsubishi has provided to the Commission a large number of copies of internal vouchers representing payment of evacuation expenses. The Panel finds that the documentary evidence confirms that Mitsubishi incurred the claimed evacuation expenses, and that such expenses were equal to an average of yen 194,712 per person evacuated. Based on the advice of its consultants, the Panel calculated average rather than actual evacuation expenses per person because the claimed evacuation expenses did not vary significantly by location and because the large amount of supporting documentation submitted by Mitsubishi would have made it excessively time consuming to reconcile specific expenses to specific evacuated persons.

71. The Panel finds that the compensability of a proven evacuation expense incurred by Mitsubishi depends on the country from which the evacuation occurred. Mitsubishi incurred expenses to evacuate employees from Iraq, Kuwait, Saudi Arabia and certain other countries in the Middle East and Persian Gulf region. To determine the compensability of the claimed evacuation expenses the Panel is guided by decision 7 of the Governing Council 9/ and by the application of that decision to evacuation expenses by the Panel of Commissioners appointed to review claims submitted by governments and international organizations (the "F1" Panel). 10/

(a) Iraq and Kuwait

72. Decision 7 of the Governing Council states that losses resulting from departures from Iraq or Kuwait during the period 2 August 1990 to 2 March 1991 were incurred as a result of Iraq's unlawful invasion and occupation of Kuwait. 11/ Proven expenses incurred by Mitsubishi to evacuate employees from Iraq and Kuwait are therefore compensable.

73. Based on the average per capita evacuation expense of yen 194,712, the Panel finds that Mitsubishi incurred expenses in the amount of yen 14,019,264 to evacuate 72 persons from Iraq and Kuwait and recommends compensation in the United States dollar equivalent of that amount.

(b) Saudi Arabia

74. In decision 7, only expenses incurred to evacuate individuals from Iraq or Kuwait, and not from other countries, are explicitly stated as being compensable. Decision 7 does, however, provide that any "loss suffered as a result of ... [m]ilitary operations or threat of military action by either side during the period 2 August 1990 to 2 March 1990" is compensable if adequately proven. 12/

75. In its discussion of a claim concerning the evacuation of persons from countries other that Iraq and Kuwait, the "F1" Panel found that this provision of decision 7

> "can serve as the basis for claims in respect of evacuation [from countries other than Iraq and Kuwait] provided a claimant can establish a direct causal link between its loss and Iraq's invasion and occupation of Kuwait. Such a link can be shown where actual military operations were conducted against a country from which persons were evacuated or where an actual - as opposed to speculative - threat of military action existed against a country from which an evacuation took place." 13/

76. In the same discussion, the "F1" Panel agreed with the "C" Panel's finding that "a claim based on an incident occurring outside Kuwait or Iraq needs to be more fully substantiated" to establish the necessary direct link between the loss and Iraq's unlawful invasion and occupation of Kuwait. The "F1" Panel did not, however, state whether such higher level of substantiation had been provided in support of the claims it was discussing. Instead, it requested information on the evacuation of individuals from other Middle Eastern countries during the relevant period from several governments and asked the secretariat to research the range and use of Iraqi missiles during Iraq's occupation of Kuwait. 14/

77. Based on the results of this investigation, the "F1" Panel found that military actions and the threat of military action were directed against Saudi Arabia and Israel as well as Iraq and Kuwait during the relevant period. It therefore recommended that compensation be awarded for proven costs incurred to evacuate persons from Saudi Arabia and Israel, but not from other Middle Eastern countries. 15/

78. The Panel adopts the "F1" Panel's findings that military operations or the threat of military action were directed against Saudi Arabia as well as Kuwait and Iraq. It therefore finds that proven expenses incurred by Mitsubishi in the evacuation of employees and their dependants from Saudi Arabia are compensable (Mitsubishi is not seeking compensation for expenses incurred in evacuating persons from Israel).

79. Based on Mitsubishi's average per capita evacuation expense of yen 194,712, the Panel finds that Mitsubishi incurred expenses in the amount of yen 15,187,536 to evacuate 78 persons from Saudi Arabia and recommends compensation in the United States dollar equivalent of that amount.

(c) Countries other than Iraq, Kuwait and Saudi Arabia

80. As discussed above, the "F1" Panel has found that expenses incurred to evacuate persons from countries other than Iraq, Kuwait, Saudi Arabia and Israel are not compensable (see paras. 72-77, supra). 16/ The Panel therefore recommends that no compensation be awarded with respect to the evacuation of Mitsubishi employees and their dependants from countries other than Iraq, Kuwait and Saudi Arabia.

2. Stolen or damaged property of employees

81. Mitsubishi also seeks compensation in the amount of yen 123,303,455 for expenses incurred to compensate evacuated employees for household goods, cash, food and other personal effects that were left in Iraq and Kuwait.

82. In support of this part of its claim, Mitsubishi has provided to the Commission a large number of copies of internal vouchers representing payment of such expenses.

83. The Panel finds that the evidence submitted confirms that Mitsubishi incurred the claimed expenses, and that these were a direct result of Iraq's invasion and occupation of Kuwait.

84. Accordingly, the Panel recommends that compensation in the United States dollar equivalent amount of yen 123,303,455 be paid with respect to this portion of Mitsubishi's claim.

B. Contract losses due to non-payment for delivered goods

85. In loss elements 2, 12 and 19, Mitsubishi alleges that, as a result of Iraq's invasion and occupation of Kuwait, it has in several instances not received payment for goods that were delivered to customers in Iraq prior to 2 August 1990. Mitsubishi seeks compensation in the amount of yen 33,250,151 for such losses.

86. In support of this portion of its claim, Mitsubishi has provided contractual documentation including purchase orders and estimates, invoices, letter of credit documentation, bills of lading and air waybills.

87. The Panel notes that, because the claims discussed below all arise from contractual obligations created prior to Iraq's invasion and occupation of Kuwait, the Panel must determine whether each claim is excluded from the jurisdiction of the Commission on the basis that it falls within the meaning of the "arising prior to 2 August 1990" limitation imposed by paragraph 16 of Security Council resolution 687 (1991).

1. Loss element 2

88. Mitsubishi states that on 16 May 1990 it shipped certain spare parts for telecommunications equipment to the State Establishment for Pipelines of the Ministry of Oil of Iraq (the "State Establishment of Pipelines") pursuant to an agreement entered into in 1988. Mitsubishi claims that it was not able to secure payment for the spare parts because the letter of credit for the transaction had expired prior to the shipment date and attempts by the State Establishment of Pipelines to pay for the goods by means of a wire transfer did not succeed. Mitsubishi has provided to the Commission documentary evidence showing that the parties were in the process of arranging for payment of the purchaser's debt when Iraq invaded Kuwait.

89. The State Establishment for Pipelines' debt to Mitsubishi remains unpaid. Mitsubishi seeks compensation in the amount of yen 2,146,000, the contract price of the spare parts, for the resulting loss.

90. As mentioned above, the Panel's first task is to determine whether loss element 2 is within the jurisdiction of the Commission. Because the loss element arose from a contractual obligation created prior to Iraq's unlawful invasion and occupation of Kuwait, the Panel must determine, as a threshold matter, (1) whether the claim is a debt or an obligation of Iraq and (2) whether it falls within the meaning of the "arising prior to 2 August 1990" limitation imposed by paragraph 16 of Security Council resolution 687 (1991).

91. The Panel finds that the State Establishment of Pipelines' obligation to pay Mitsubishi for the spare parts is a debt of Iraq within the meaning of Security Council resolution 687 (1991).

92. Next, the Panel must determine when this debt arose, and specifically whether the debt arose prior to 2 August 1990, as discussed in section II.C., supra.

93. The Panel finds that the spare parts were shipped on 16 May 1990. In addition, the Panel finds that because the contract between the parties was "FOB Japan", shipment of the spare parts was equivalent to performance by Mitsubishi. As such performance occurred after 2 May 1990, the Panel finds that the State Establishment of Pipelines' obligation to pay for the spare parts is a debt or obligation of Iraq that falls within the jurisdiction of the Commission. As a result, loss element 2 is within the jurisdiction of the Commission.

94. Accordingly, the Panel must decide whether there exists a causal relationship between Iraq's unlawful invasion of Kuwait and the State Establishment of Pipelines' failure to pay for the spare parts. In order to do so, it must consider the terms of the agreement between Mitsubishi and the State Establishment of Pipelines.

95. The Panel finds, based on documentary evidence provided to the Commission, that in 1988 Mitsubishi and the State Establishment of Pipelines entered into a binding agreement with respect to delivery of the spare parts. This agreement provided that payment for the spare parts would occur upon Mitsubishi's presentation of shipping papers to the letter of credit bank in Japan. The Panel therefore infers that it was the intent of Mitsubishi and the State Establishment of Pipelines that payment for the spare parts occur on, or soon after, the shipment date.

96. The documentary evidence provided to the Commission confirms that Mitsubishi shipped the spare parts to Iraq on 16 May 1990. Pursuant to the parties' agreement, Mitsubishi should have been able to obtain payment by presenting the shipping documents to the letter of credit bank in Japan on that date or soon afterwards. However, the letter of credit for the transaction had expired prior to the shipment date. Mitsubishi has stated that it was aware of this fact. Nevertheless, it assumed the risk of shipping the spare parts without a valid letter of credit in place because it had received oral assurances from representatives of the purchaser that payment would be made by means of a wire transfer. Based on Mitsubishi's statements, the Panel finds that the parties' understanding that payment would be effected by means other than the letter of credit did not affect the parties' original agreement that payment occur on, or soon after, the shipment date.

97. Accordingly, the Panel finds that the State Establishment of Pipelines' debt to Mitsubishi became due on, or soon after, 16 May 1990. However, Mitsubishi states that payment did not occur because of several misunderstandings between the State Establishment of Pipelines and its bankers. The documentary evidence provided shows that the debt was still outstanding on 2 August 1990, the date of Iraq's invasion of Kuwait. The Panel notes that Kuwait was invaded by Iraq approximately ten weeks after the date of shipment of the spare parts. The Panel finds that the length of such period exceeds the time reasonably necessary to correct any

misunderstandings that may have occurred between the purchaser and its bankers and effect payment for the spare parts, and that the parties' agreement that payment be made on, or soon after, 16 May 1990 was violated prior to the date of Iraq's invasion of Kuwait.

98. The Panel therefore finds that Mitsubishi's loss was incurred as a result of a contractual violation by the State Enterprise for Pipelines, resulting in an overdue debt, rather than as a result of Iraq's unlawful invasion and occupation of Kuwait. Accordingly, the Panel recommends that no compensation be awarded with respect to this loss element.

### 2. Loss element 12

99. In the case of loss element 12, Mitsubishi claims that it made four shipments of spare parts to the North Oil Company ("NOC"), an entity owned by the Ministry of Oil of Iraq. The first three occurred in August of 1987. The last was made on 19 January 1989. Payment for the spare parts was to occur 720 days after their shipment dates by means of letters of credit opened in favour of Mitsubishi by NOC.

100. NOC's debt to Mitsubishi remains unpaid. Mitsubishi seeks compensation in the amount of yen 30,063,966, the contract price of the spare parts, for the resulting loss.

101. The Panel's first task is to determine whether loss element 12 is within the jurisdiction of the Commission. Because loss element 12 arose from a contractual obligation created prior to Iraq's unlawful invasion and occupation of Kuwait, the Panel must determine, as a threshold matter, (1) whether the claim is a debt or an obligation of Iraq and (2) whether it falls within the meaning of the "arising prior to 2 August 1990" limitation imposed by article 16 of Security Council resolution 687 (1991).

102. The Panel finds that NOC's obligation to pay for the spare parts is a debt of Iraq within the meaning of Security Council resolution 687 (1991).

103. Next, the Panel must determine when this debt arose, and specifically whether the debt arose prior to 2 August 1990, as discussed in section II.C., supra.

104. The documentary evidence provided to the Commission confirms that three shipments of spare parts occurred in August of 1987 and that the last one occurred in January of 1989. As performance occurred before 2 May 1990, the Panel finds that NOC's obligation to pay for the spare parts is a debt or obligation of Iraq that arose prior to 2 August 1990 within the meaning of paragraph 16 of resolution 687 (1991). As a result, the claim set forth in loss element 12 is outside the jurisdiction of the Commission.

105. Accordingly, the Panel need not decide whether there exists a causal relationship between Iraq's unlawful invasion of Kuwait and its failure to fulfill its obligation to pay for the spare parts.

106. Because the Panel finds that the Commission lacks jurisdiction over loss element 12, it recommends that no compensation be awarded for this claim.

### 3. Loss element 19

107. Mitsubishi claims that on 3 March 1990 it shipped certain spare parts for telecommunications equipment to the State Enterprise for Fertilizer ("SEF") pursuant to an agreement entered into in 1989. The letter of credit that had been put in place for the transaction required the confirmation of the London branch of Rafidain Bank ("Rafidain London"). Mitsubishi claims that it was not able to secure payment for the spare parts at the time of their shipment because the validity of Rafidain London's confirmation of the letter of credit had expired prior to shipment of the spare parts. Mitsubishi has provided documentary evidence showing that the parties were in the process of arranging for payment of SEF's debt when Iraq invaded Kuwait.

108. The purchaser's debt to Mitsubishi remains unpaid. Mitsubishi seeks compensation in the amount of yen 1,040,185, the contract price of the spare parts, for the resulting loss.

109. The Panel's first task is to determine whether loss element 19 is within the jurisdiction of the Commission. Because loss element 19 arose from a contractual obligation created prior to Iraq's unlawful invasion and occupation of Kuwait, the Panel must determine, as a threshold matter, (1) whether the claim is a debt or an obligation of Iraq and (2) whether it falls within the meaning of the "arising prior to 2 August 1990" limitation imposed by article 16 of Security Council resolution 687 (1991).

110. The Panel finds that SEF's obligation to pay for the spare parts is a debt of Iraq within the meaning of Security Council resolution 687 (1991).

111. Next, the Panel must determine when this debt arose, and specifically whether the debt arose prior to 2 August 1990, as discussed in section II.C., supra.

112. The documentary evidence provided confirms that the spare parts were shipped on 3 March 1990. The Panel finds that, under the contract between the parties, performance occurred upon shipment of the spare parts by Mitsubishi. As performance occurred before 2 May 1990, the Panel finds that SEF's obligation to pay for the spare parts is a debt or obligation of Iraq that arose prior to 2 August 1990 within the meaning of paragraph 16

of resolution 687 (1991). As a result, the claim set forth in loss element 19 is outside the jurisdiction of the Commission.

113. Accordingly, the Panel need not decide whether there exists a causal relationship between Iraq's unlawful invasion of Kuwait and its failure to fulfill its obligation to pay for the spare parts.

114. Because the Panel finds that the Commission lacks jurisdiction over loss element 19, it recommends that no compensation be awarded for this claim.

### C. Contract losses for undelivered goods not resold

115. Prior to 2 August 1990, Mitsubishi entered into several contracts to deliver line pipes, spare parts and accessories to certain Iraqi purchasers with operations in the oil, gas and fertilizer business. Mitsubishi claims that, as a result of Iraq's invasion and occupation of Kuwait, it was not able to deliver and secure payment for such items.

116. The resulting losses, for which Mitsubishi seeks compensation in the amount of US$164,898.06 and yen 217,232,621, are set forth by Mitsubishi as loss elements 6, 11, 13, 14, 15, 16, 17 and 18.

#### 1. Loss element 6

117. Mitsubishi states that on 28 June 1990 it received an order for steel fittings from the State Company for Oil Projects ("SCOP") of Iraq. The order was made pursuant to a contract for the supply of line pipe and certain accessories to the North Rumaila Project in Iraq (the "North Rumaila Contract") that SCOP and Mitsubishi had entered into in 1989. The steel fittings were scheduled to be delivered in August of 1990 but were not shipped due to Iraq's invasion of Kuwait.

118. The contract price of the shipment was US$209,000. Mitsubishi states that it was able to cancel the production of steel fittings worth US$44,102. In addition, it claims that, because the steel fittings were very specialized and therefore impossible to resell, it scrapped items produced prior to 2 August 1990 in March of 1996. The scrap value achieved was employed to pay storage costs incurred until that date.

119. Mitsubishi seeks compensation in the amount of US$164,898, the contract price of steel fittings produced but not delivered to SCOP.

120. Mitsubishi has provided to the Commission parts of the North Rumaila Contract and certain other contractual documentation with respect to the order of steel fittings and debit notes evidencing payments by Mitsubishi to suppliers of the steel fittings. Mitsubishi also provided documentary evidence showing that the steel fittings were scrapped and that their scrap value was yen 37,372.

121. The Panel finds that the documentary evidence provided confirms that Mitsubishi incurred a loss with respect to the steel fittings. The Panel also notes that the military situation in the Persian Gulf region would have made it impossible to deliver the steel fittings to Iraq as planned. The Panel therefore agrees with Mitsubishi's contention that its inability to deliver steel fittings and secure payment for them was a direct result of Iraq's unlawful invasion and occupation of Kuwait and finds, pursuant to Governing Council decision 9, that the existence of the trade embargo against Iraq that was established by Security Council resolution 661 (1990) does not therefore affect compensability.

122. In addition, the Panel finds that the scrapping of the produced items for a very small gain supports Mitsubishi's claim that the items were very specialized and therefore difficult to resell to a third party. The Panel therefore finds that scrapping the items was appropriate mitigation of Mitsubishi's loss.

123. However, the Panel notes that, because the steel fittings were never delivered to Iraq, shipping expenses were not incurred with respect to them. It would be appropriate to deduct such expenses from compensation awarded with respect to this loss element if the North Rumaila Contract allocated them to Mitsubishi. The contractual documentation that has been provided to the Commission does not state whether Mitsubishi was responsible for such expenses. However, the Panel notes that Mitsubishi has not provided to the Commission the tender documents with respect to the North Rumaila project, which are a part of the North Rumaila Contract. The Panel also notes that Mitsubishi has not provided evidence indicating which party would bear expenses with respect to delivery of the steel fittings. Accordingly, the Panel concludes that Mitsubishi may have been responsible for such expenses. The Panel finds, after hearing the opinion of its consultants, that the saved shipping expenses would have been equal to approximately 5 per cent of the contract price of the order, or US$10,450. The Panel finds that such amount should be subtracted from Mitsubishi's claimed loss.

124. Accordingly, the Panel recommends that compensation in the amount of US$154,448 be awarded with respect to this loss element.

### 2. Loss elements 11, 14, 16, 17 and 18

125. In the case of loss elements 11, 14, 16, 17 and 18, Mitsubishi had entered into contracts to deliver spare parts to NOC, the State Enterprise for Northern Gas Industry ("SENGI"), the South Oil Company, the State Enterprise for Oil Refining and Gas Industry in the Southern Area and SEF, all entities owned by the Government of Iraq.

126. Mitsubishi states that a part of the items covered by such contracts were produced prior to 2 August 1990 and could not be delivered to their purchasers as a result of Iraq's invasion and occupation of Kuwait. Mitsubishi also states that it was therefore unable to mitigate its loss through resales to third parties because the spare parts had been manufactured to the purchasers' specifications. Mitsubishi seeks compensation in the amount of yen 212,599,421 for the resulting losses.

127. In support of these loss elements, Mitsubishi has provided to the Commission contractual documentation with respect to the orders of spare parts, letters of credit for the transactions and, except in the case of loss element 17, letters from suppliers of spare parts stating that the items intended to be delivered to Iraq were too unique to be resold.

128. Mitsubishi has not, however, provided evidence showing that the spare parts had been produced and that Mitsubishi incurred an expense for them. The letters of the suppliers only concern the use of the spare parts and whether they could have been resold to third parties; they do not state that the relevant spare parts were produced and sold to Mitsubishi. Nor has Mitsubishi explained what happened to the spare parts after 2 August 1990; no evidence of storage or scrapping of the spare parts has been provided.

129. In addition, the Panel finds that Mitsubishi has failed to prove that it could not have mitigated its loss through resales of spare parts to third parties. The Panel believes that the letters from suppliers that were provided are not sufficient evidence of the uniqueness of the spare parts.

130. The Panel therefore finds that Mitsubishi's claim with respect to loss elements 11, 14, 16, 17 and 18 must fail on evidentiary grounds. Accordingly, the Panel recommends that no compensation be awarded with respect to these loss elements.

### 3. Loss elements 13 and 15

131. Prior to 2 August 1990, Mitsubishi entered into two contracts to deliver spare parts to NOC and SENGI. Mitsubishi was able to cancel the production of such spare parts upon Iraq's invasion of Kuwait. In doing so, it claims to have incurred yen 4,633,200 in cancellation charges and seeks compensation in that amount in loss elements 13 and 15.

132. In support of loss elements 13 and 15, Mitsubishi has provided contractual documentation with respect to the orders of spare parts. It has not, however, provided evidence with respect to the cancellation charges to the Commission.

133. The Panel notes that Mitsubishi has not proved that it incurred the claimed cancellation charges. Accordingly, the Panel finds that Mitsubishi's claim with respect to these loss elements must fail on evidentiary grounds and recommends that no compensation be awarded.

### D. Contract losses for undelivered goods that were resold

134. Prior to 2 August 1990, Mitsubishi entered into certain contracts to deliver steel plates, seamless steel casing and printed and dyed fabrics to purchasers in Iraq and Kuwait. Mitsubishi claims that, as a result of Iraq's invasion and occupation of Kuwait, it was not able to deliver such goods as intended. In order to mitigate its losses, Mitsubishi sold them to third parties at discounted prices.

135. The resulting losses, together with certain storage, shipping and other expenses incurred by Mitsubishi, are set forth in loss elements 4, 7 and 8 (which relate to sales of line pipe, steel plate and seamless steel casing intended for Kuwaiti and Iraqi purchasers) and 20, 21, 22, 23, 24, 25, 26, 27, and 28 (which relate to sales of dyed or printed fabric intended for Kuwaiti purchasers). Mitsubishi requests compensation in the amount of US$2,726,973 and yen 239,178,601 for such losses.

#### 1. Loss element 4

136. Mitsubishi states that prior to Iraq's invasion of Kuwait it entered into a contract to supply steel plates to Burgan Contracting Co. WLL, a Kuwaiti company. The contract price of the steel plates ordered was US$5,086. The steel plates were shipped to Kuwait from Japan on 21 July 1990 but were re-directed to Singapore when Iraq invaded Kuwait on 2 August 1990. Mitsubishi claims that, after incurring storage charges of US$957, the steel plates were sold to a third party for US$2,725, at a loss of US$2,361 on the contract price.

137. Mitsubishi accordingly seeks compensation in the amount of US$3,318 for the resale loss and associated storage charges.

138. In support of loss element 4, Mitsubishi has provided to the Commission the original contractual documentation with respect to delivery of the steel plates to Kuwait and invoices evidencing resale transactions and storage costs.

139. The Panel finds that the documentary evidence provided to the Commission confirms that Mitsubishi incurred the claimed resale losses and storage expenses. The Panel also notes that the military situation in the Persian Gulf region would have made it impossible to deliver the steel plates as planned. The Panel therefore agrees with Mitsubishi's contention that its inability to deliver steel plates and secure payment for them was a direct result of Iraq's unlawful invasion and occupation of Kuwait and

finds, pursuant to Governing Council decision 9, that the existence of the trade embargo against Iraq established by Security Council resolution 661 (1990) does not therefore affect compensability.

140. Accordingly, the Panel recommends that compensation in the United States dollar equivalent amount of US$3,318 be awarded with respect to this loss element.

2. Loss element 7

141. Mitsubishi claims that prior to 2 August 1990 it entered into a contract for the supply of line pipe and accessories to SCOP pursuant to the North Rumaila Contract. The contract price of the line pipe ordered was US$3,480,000. Shipments of line pipe under the contract were due to begin after Iraq's invasion of Kuwait.

142. Mitsubishi states that upon Iraq's invasion of Kuwait it was able to cancel the production of an amount of line pipe equal to US$2,507,662 of the contract price without incurring penalties. However, the remainder of the line pipe ordered by SCOP had already been produced. Despite several attempts to sell it to third parties, Mitsubishi remained in possession of the line pipe until March of 1997, when it was sold to two purchasers for US$233,540 at a loss of US$738,798 on its original contract price of US$972,338.

143. In addition, Mitsubishi claims that it incurred charges of yen 101,766,266 and yen 14,257,030 for storage and maintenance of the line pipe, respectively. Mitsubishi also claims that it incurred expenses in the amount of US$91,869 and yen 5,014,321 to ship resold line pipe to its purchasers.

144. Mitsubishi accordingly seeks compensation in the amount of US$830,667 and yen 121,037,617 for storage, maintenance, delivery and other resale expenses incurred.

(a) Losses on resales

145. In support of its claim with respect to losses on resales, Mitsubishi has provided to the Commission the original contractual documentation with respect to the sale of the line pipe, including the Payment Agreement between Mitsubishi and State Oil Marketing ("SOMO") which governs payments made for the line pipe, and invoices evidencing resales to third parties.

146. The Panel finds that the documentary evidence provided to the Commission confirms that in 1997 Mitsubishi sold the line pipe at a loss of US$738,798 on its contract price. However, in reply to a question from the Panel, Mitsubishi has indicated that it has received a down payment of US$538,423 with respect to the line pipe from SCOP. Mitsubishi has

indicated that such down payment has been "frozen" in a deposit account and that it believes that the down payment might have to be paid back to SCOP because the line pipe has not been delivered. However, Mitsubishi has provided no further information or evidence with respect to the allegedly "frozen" account. Nor has it proved that the down payment would have to be reimbursed to SCOP; the Panel notes that the Payment Agreement between Mitsubishi and SOMO, which provides for the down payment, does not set forth circumstances under which the down payment is reimbursable. Because Mitsubishi has not proved that it does not have access to the down payment or that it will be required to reimburse it to SCOP or SOMO, the Panel finds that the down payment should be deducted from Mitsubishi's claimed resale loss. Accordingly, the Panel finds that Mitsubishi's actual loss on the resale transactions was equal to US$200,375.

147. The Panel also notes that the military situation in the Persian Gulf region would have made it impossible to deliver line pipe to Iraq as planned. The Panel therefore agrees with Mitsubishi's contention that its inability to deliver line pipe and secure payment for it was a direct result of Iraq's invasion and occupation of Kuwait and finds, pursuant to Governing Council decision 9, that the existence of the trade embargo against Iraq established by Security Council resolution 661 (1990) does not therefore affect compensability. 17/

148. Accordingly, the Panel finds that Mitsubishi's claimed resale loss was a direct result of Iraq's invasion and occupation of Kuwait and recommends that compensation in the amount of US$200,375 be awarded.

(b) Storage and maintenance costs

149. Mitsubishi has provided invoices with respect to storage and maintenance costs. Mitsubishi has also provided to the Commission copies of telexes and other correspondence evidencing efforts to sell the line pipe to third parties between November of 1991 and its resale date.

150. The Panel finds that Mitsubishi has proved that it incurred storage and maintenance costs in the claimed amount. Such expenses were incurred between the date of Iraq's invasion of Kuwait and March of 1997, when the line pipe was sold. The storage and maintenance charges were therefore incurred over a period of more than six years.

151. The Panel believes that it would have been difficult for Mitsubishi to mitigate its loss with respect to the line pipe through resales to third parties without incurring certain expenses to store and maintain the condition of the line pipe. However, the Panel must determine whether all the claimed storage and maintenance expenses were reasonably incurred.

152. The Panel notes that the evidence provided shows that, with the exception of several attempts in 1994, Mitsubishi made only sporadic attempts to resell the line pipe. In addition, Mitsubishi has not provided evidence showing that market conditions for sales of the line pipe were relatively unfavorable prior to the date of their ultimate resale by Mitsubishi or that the line pipe was difficult to sell because it had special characteristics. The Panel therefore concludes that Mitsubishi could have resold the line pipe more rapidly than it did, and that its failure to do so was likely to have been the result of a poor commercial decision or negligence.

153. The Panel believes that one year after Iraq's invasion of Kuwait it should have been clear to Mitsubishi that it would not, within the foreseeable future, become possible to deliver the line pipe to SCOP. At that time, Mitsubishi acquired a duty to mitigate its loss through resales of the line pipe to third parties. The Panel believes that such resales could reasonably have been expected to be accomplished within a period of one additional year. The Panel therefore finds that it would have been reasonable to incur storage and maintenance costs with respect to the line pipe during the two years that followed the date of Iraq's unlawful invasion of Kuwait.

154. Accordingly, the Panel finds that storage and maintenance expenses incurred by Mitsubishi between 2 August 1990 and 2 August 1992 were a direct result of Iraq's unlawful invasion and occupation of Kuwait. The Panel has, with the assistance of its consultants, calculated that these amounted to yen 21,686,756 and recommends compensation in the United States dollar equivalent of that amount be awarded.

(c) Delivery costs

155. Mitsubishi has provided to the Commission a bill of lading, a freight list and a debit note evidencing expenses incurred to deliver the line pipe to its purchasers in March of 1997.

156. The Panel finds that the evidence provided confirms that Mitsubishi incurred the delivery expenses of US$91,869 and yen 5,014,321. The Panel finds that Mitsubishi reasonably incurred such expenses to mitigate its loss with respect to the line pipe contract with SCOP.

157. However, the Panel notes that, because the line pipe that was produced by Mitsubishi was never delivered to Iraq, shipping expenses were not incurred with respect to it. It would be appropriate to deduct such expenses from compensation awarded with respect to this loss element if the North Rumaila Contract allocated them to Mitsubishi. The contractual documentation that has been provided to the Commission does not state whether Mitsubishi was responsible for such expenses. However, the Panel notes that Mitsubishi has not provided the tender documents with respect to

the North Rumaila project, which are a part of the North Rumaila Contract. The Panel also notes that Mitsubishi has not provided evidence indicating which party would bear expenses with respect to delivery of the line pipe. Accordingly, the Panel concludes that Mitsubishi may have been responsible for such expenses. The Panel finds, after hearing the opinion of its consultants, that the saved shipping expenses would have been roughly equal to the claimed resale delivery costs. Accordingly, the Panel recommends that no compensation be awarded with respect to Mitsubishi's claimed delivery costs.

### 3. Loss element 8

158. Mitsubishi states that prior to Iraq's invasion of Kuwait it entered into a contract to deliver 23,472 metric tons of steel casing to SOC. The contract price of the steel casing was US$16,400,000. Prior to 2 August 1990 Mitsubishi had produced 9,301 metric tons of steel casing. Mitsubishi claims that, as a result of Iraq's invasion and occupation of Kuwait, it was not able to deliver such items to SOC.

159. To mitigate the resulting loss, Mitsubishi tried to sell the steel casing originally intended for SOC to third parties. Part of the steel casing was moved from Japan to Singapore, where Mitsubishi believed there was a better market for it. Mitsubishi sold the entire amount produced between April of 1991 and July of 1996. In doing so, it claims to have incurred a loss of US$1,837,629 on the original contract price of the steel casing. Mitsubishi also claims to have incurred storage and freight charges of yen 117,622,219 in connection with the resales.

160. Mitsubishi accordingly seeks compensation in the amount of US$1,837,629 and yen 117,622,219 for such losses. Applying the 1 August 1990 Japanese yen to United States dollar exchange rate to claimed expenses stated in yen, Mitsubishi's claim with respect to loss element 8 is equal to US$2,653,034. 18/

161. Mitsubishi has provided to the Commission the original contractual documentation with SOC, a schedule of resales of steel casing and invoices evidencing resale transactions and storage and freight charges.

162. The Panel notes that, in reply to a question posed to it in December of 1998, Mitsubishi indicated that it received a down payment of US$2,460,000 with respect to the order of steel casing from SOC. Mitsubishi has indicated that such down payment has been "frozen" in a deposit account and that it believes that it might have to pay it back to SOC because the line pipe has not been delivered. However, Mitsubishi has provided no further information or evidence with respect to the "frozen" account. Nor has it proved that the down payment would have to be

reimbursed to SOC; the Panel notes that the Payment Agreement between Mitsubishi and SOMO, which provides for the down payment, does not set forth circumstances under which the down payment is reimbursable. Because Mitsubishi has not proved that it does not have access to the down payment or that it will be required to reimburse it to SOC or SOMO, the Panel finds that the down payment should be set off against Mitsubishi's claimed loss.

163. The Panel notes that Mitsubishi is, as part of its claim for storage and freight charges of yen 117,622,219, seeking compensation for shipping and transportation expenses equal to yen 55,580,208. Applying the 1 August 1990 Japanese yen to United States dollar exchange rate, such amount is equal to US$385,305.

164. The Panel finds that Mitsubishi has not explained in detail why individual items of the total claimed shipping and transportation expense were incurred and how these resulted from Iraq's unlawful invasion and occupation of Kuwait. As a result, much of the evidence provided in support of this part of Mitsubishi's claim has limited probative value. In addition, the Panel notes that Mitsubishi has not stated whether it had, under the original contract with SOC, been allocated responsibility for shipping costs to Iraq. However, SOC's purchase order for the steel casing, which states the total contract value as being "C&F Umm Qasr", makes it apparent that Mitsubishi had agreed to bear such costs. Due to Mitsubishi's silence on this point, the Panel has no information with respect to the magnitude of the expense that Mitsubishi would have incurred to deliver the steel fittings to Iraq. The Panel is not, therefore, in a position to determine the extent, if any, to which any claimed shipping and transportation that resulted from Iraq's unlawful invasion and occupation of Kuwait exceeded shipping expenses that Mitsubishi would have been required to incur under its contract with SOC. For the reasons stated above, the Panel finds that Mitsubishi's claim for shipping and transportation expenses must fail on evidentiary grounds.

165. The Panel notes that Mitsubishi's total claim with respect to this loss element is equal to US$2,653,034. This amount is reduced to US$2,267,729 as a result of the Panel's finding that Mitsubishi's claim with respect to shipping and transportation costs must fail on evidentiary grounds. Because the magnitude of such reduced amount is smaller than the down payment of US$2,460,000 that Mitsubishi received from SOC, the Panel does not need to consider Mitsubishi's claimed resale and storage expenses and accordingly recommends that no compensation be awarded with respect to loss element 8.

4. Loss elements 20 to 28

166. Prior to 2 August 1990, Mitsubishi entered into several contracts to sell dyed or printed fabrics to purchasers in Kuwait. Mitsubishi claims that, as a result of Iraq's unlawful invasion and occupation of Kuwait, it was not able to deliver such fabrics and had to sell them at discounted prices to third parties instead.

167. Mitsubishi seeks compensation in the amount of US$55,359 for such losses, which are set forth in loss elements 20 to 28. In the case of all such loss elements except loss elements 23, 26 and 28, Mitsubishi is also advancing a claim for certain shipping charges related to the resales. Mitsubishi seeks compensation in the amount of yen 518,765 for such expenses.

168. In support of loss elements 20 to 28 Mitsubishi has provided to the Commission the original contractual documentation with respect to the planned sales to Kuwaiti purchasers. Mitsubishi has also provided invoices evidencing the storage charges, but these have not been translated into English. The Panel notes that all evidence provided by corporate claimants in support of their claims is required to be in English or accompanied by a translation into English. 19/

169. The Panel notes that the military situation in the Persian Gulf region would have made it impossible to deliver the fabric to Kuwait as planned. The Panel therefore agrees with Mitsubishi's contention that its inability to deliver the fabric and secure payment for it was a direct result of Iraq's unlawful invasion and occupation of Kuwait and finds, pursuant to Governing Council decision 9, that the existence of the trade embargo against Iraq established by Security Council resolution 661 (1990) does not therefore affect compensability. The Panel also finds that the evidence provided confirms that Mitsubishi incurred the claimed losses on resales.

170. However, the Panel finds that because invoices with respect to the claimed shipping charges have not been translated into English, Mitsubishi's claim with respect to such costs must fail on evidentiary grounds.

171. Accordingly, the Panel recommends that compensation in the amount of US$55,359 be awarded with respect to the resale losses claimed in loss elements 20 to 28, but that no compensation be awarded with respect to the shipping expenses.

E. Loss element 10

172. On 2 December 1984 Mitsubishi Heavy Industries, Ltd. ("Mitsubishi Heavy Industries") and Mitsubishi entered into a lump sum turnkey contract with SCOP of Iraq for the construction of the Majnoon Heavy Oil Project (the "Majnoon Project").

173. Mitsubishi claims that, as a result of Iraq's unlawful invasion and occupation of Kuwait, SCOP stopped making payments with respect to debt related to the Majnoon Project. The resulting losses, for which Mitsubishi seeks compensation in the amount of yen 12,109,546,442, are set forth in loss element 10.

174. In support of loss element 10 Mitsubishi has provided to the Commission a summary table of debt payments, excerpts of the construction contract with respect to the Majnoon Project and correspondence and an extended financing agreement evidencing the rescheduling of payments by SCOP with respect to Majnoon Project debt.

175. The Panel's first task is to determine whether loss element 10 is within the jurisdiction of the Commission. Because loss element 10 arose from a contractual obligation created prior to Iraq's unlawful invasion and occupation of Kuwait, the Panel must determine, as a threshold matter, (1) whether the claim is a debt or an obligation of Iraq and (2) whether it falls within the meaning of the "arising prior to 2 August 1990" limitation imposed by paragraph 16 of Security Council resolution 687 (1991).

176. The Panel finds that SCOP's obligation to pay its debt to Mitsubishi is a debt of Iraq within the meaning of Security Council resolution 687 (1991).

177. Next, the Panel must determine when this debt arose, and specifically whether the debt arose prior to 2 August 1990, as discussed in section II.C., supra.

178. Because SCOP's debt appeared to have been rescheduled prior to Iraq's invasion of Kuwait, on 3 September 1998 the Panel asked Mitsubishi in a procedural order whether such debt "was ... accumulated prior to 1989". Mitsubishi replied on 14 October 1998 that the debt had become due under its original terms during or prior to 1989, when it was rescheduled. The Panel therefore finds that SCOP's obligation to pay its debt to Mitsubishi is a debt or obligation of Iraq that arose prior to 2 August 1990 within the meaning of paragraph 16 of resolution 687 (1991). As a result, the claim set forth in loss element 10 is outside the jurisdiction of the Commission.

179. Accordingly, the Panel need not decide whether there exists a causal relationship between Iraq's unlawful invasion and occupation of Kuwait and its failure to fulfill its obligation to pay for the spare parts.

180. Because the Panel finds that the Commission lacks jurisdiction over loss element 10, it recommends that no compensation be awarded with respect to it.

## F. Other losses

### 1. Loss element 5

181. Mitsubishi alleges that as a result of Iraq's unlawful invasion and occupation of Kuwait it was not reimbursed for expenses it incurred in July of 1990 on behalf of SCOP for certain third-party inspections at the North Rumaila project in Iraq. Mitsubishi seeks compensation in the amount of US$48,052 for the resulting losses.

182. Mitsubishi has provided telex correspondence among SCOP, Mitsubishi and the third-party inspector showing SCOP's request that Mitsubishi make payments to the third-party inspector on its behalf, that the third-party inspector received such payments from Mitsubishi and that Mitsubishi requested reimbursement of such payments from SCOP.

183. Based on such evidence, the Panel finds that Mitsubishi made the payment with respect to the third party inspections on behalf of SCOP and that it was entitled to reimbursement of such amount. The Panel finds that such reimbursement did not occur as a direct result of Iraq's unlawful invasion and occupation of Kuwait.

184. Accordingly, the Panel recommends that compensation in the amount of US$48,052 be awarded with respect to this loss element.

### 2. Loss element 9

185. Mitsubishi alleges the following facts with respect to loss element 9: On 14 April 1990, Mitsubishi entered into a contract with Kuwait Oil Company K.S.C. ("KOC") for the delivery of seamless steel tubing. Mitsubishi was not able to deliver such steel tubing during Iraq's occupation of Kuwait. After the liberation of Kuwait, KOC refused to accept delivery of the product unless its price was decreased. Mitsubishi agreed to decrease the price by 22.5 per cent in 1992 and was preparing to ship the products to KOC in April of 1993.

186. Mitsubishi claims that the discount offered to KOC was a result of Iraq's unlawful invasion and occupation of Kuwait and seeks compensation in the amount of US$372,469, the difference between the original contract

price and the discounted price ultimately accepted by KOC. Mitsubishi has converted the claimed amount from Kuwaiti dinars to United States dollars.

187. In support of loss element 9 Mitsubishi has provided to the Commission a purchase order of KOC with respect to the steel tubing and a copy of a letter from Equipment Company Ltd. to KOC confirming that Mitsubishi had agreed to offer a 22.5 per cent discount.

188. The Panel notes that Mitsubishi has not provided evidence that it tried to mitigate its loss through resales of the steel tubing to parties other than KOC, or that such efforts could not have succeeded. Nor has it provided evidence or an explanation of why the steel tubing could not have been sold at a price higher than that ultimately paid by KOC. Mitsubishi made a commercial decision to grant the discount to KOC. However, it has not proved that it was reasonable to grant the claimed discount to KOC or that the discount represents a compensable loss.

189. The Panel therefore finds that Mitsubishi's claim with respect to this loss element must fail on evidentiary grounds and recommends that no compensation be awarded.

### 3. Loss element 29

190. Mitsubishi alleges the following facts with respect to loss element 29: On 12 July 1989 Mitsubishi entered into the North Rumaila Contract with SCOP. Under such contract the parties agreed that 5 per cent of amounts payable to Mitsubishi for orders of line pipe and accessories would be retained by the purchaser until 20 November 1991 and 20 May 1993, when SCOP would be required to pay amounts retained in two equal tranches.

191. Mitsubishi claims that, as a result of Iraq's unlawful invasion and occupation of Kuwait, it never received payment of amounts retained by SCOP under the North Rumaila Contract and seeks US$3,269,044 in compensation for its resulting loss.

192. In support of this loss element Mitsubishi has provided to the Commission an invoice with respect to the total amount retained by SCOP under the North Rumaila Contract, a schedule listing individual retentions, invoices for shipments with respect to which money was retained by SCOP and certain contractual documentation with respect to the North Rumaila Project.

193. The Panel's first task is to determine whether loss element 29 is within the jurisdiction of the Commission. Because loss element 29 arose from a contractual obligation created prior to Iraq's unlawful invasion and occupation of Kuwait, the Panel must determine, as a threshold matter, (1) whether the claim is a debt or an obligation of Iraq and (2) whether it

falls within the meaning of the "arising prior to 2 August 1990" limitation imposed by paragraph 16 of Security Council resolution 687 (1991).

194. The Panel finds that SCOP's obligation to pay the retention money to Mitsubishi is a debt of Iraq within the meaning of Security Council resolution 687 (1991).

195. Next, the Panel must determine when this debt arose, and specifically whether the debt arose prior to 2 August 1990, as discussed in section II.C., supra.

196. The Panel notes that the Payment Agreement between Mitsubishi and SOMO, which governs payments under the North Rumaila Contract, provides that 50 per cent of the amount retained by the purchaser with respect to an order under the North Rumaila Contract must be paid to Mitsubishi "upon the successful hydro-test but not later than 18 months from the [bill of lading] date of last shipment"; the remaining 50% of the retention money must be released 18 months after the release of the first half. In short, the Payment Agreement sets dates by which retention money must be paid to Mitsubishi, but states that payment may occur earlier if the supplied products pass a specific quality test. The evidence provided confirms that the claimed amount was retained by the purchaser and that it was due to be paid to Mitsubishi, in two equal tranches, on 20 November 1991 and 20 May 1993.

197. The Panel concludes that the purpose of the retention money was to ensure that any defective products supplied to SCOP under the North Rumaila Contract were repaired or replaced by Mitsubishi. As such, Mitsubishi was required, in order to be paid the retention money prior to or on 20 November 1991 and 20 May 1993, to stand ready to replace or repair defective products supplied under the North Rumaila Contract until the end of the retention period. The Panel finds that such ongoing readiness to perform was actual performance. Therefore, Mitsubishi's performance under the retention money arrangement continued until the dates when the retention money was due to be paid to Mitsubishi. As both such dates occurred after Iraq's unlawful invasion and occupation of Kuwait, the Panel finds that the purchaser's obligation to pay for the spare parts is a debt or obligation of Iraq that arose after 2 August 1990 within the meaning of paragraph 16 of resolution 687 (1991). 20/ As a result, loss element 2 is within the jurisdiction of the Commission.

198. However, the Panel finds that, because the retention money was not due to be paid until well after the liberation of Kuwait, SCOP's failure to pay the retention money to Mitsubishi was not directly caused by Iraq's unlawful invasion and occupation of Kuwait. Accordingly, the Panel recommends that no compensation be awarded with respect to this loss element.

G. Recommended award

199. The recommendations of the Panel can be summarized as follows:

Table 6. Mitsubishi recommended compensation

| Claim no. | Original Currency | Claim | Recommendation (Original currency) | Recommendation (US$) |
|---|---|---|---|---|
| 1 | (yen) | 169,450,232 | 152,510,255 | 1,179,051 |
| 2 | (yen) | 2,146,000 | 0 | 0 |
| 3 | (yen) | 199,940,000 | reallocated* | reallocated* |
| 4 | (US$) | 3,318 | 3,318 | 3,318 |
| 5 | (US$) | 48,052 | 48,052 | 48,052 |
| 6 | (US$) | 164,898 | 154,448 | 154,448 |
| 7 | (US$) | 830,667 | 200,375 | 200,375 |
| 7 | (yen) | 121,037,617 | 21,686,756 | 167,660 |
| 8 | (US$) | 1,837,629 | 0 | 0 |
| 8 | (yen) | 117,622,219 | 0 | 0 |
| 9 | (US$) | 372,469 | 0 | 0 |
| 10 | (yen) | 12,109,546,442 | 0 | 0 |
| 11 | (yen) | 120,718,951 | 0 | 0 |
| 12 | (yen) | 30,063,966 | 0 | 0 |
| 13 | (yen) | 66,000 | 0 | 0 |
| 14 | (yen) | 9,816,000 | 0 | 0 |
| 15 | (yen) | 4,567,200 | 0 | 0 |
| 16 | (yen) | 1,900,000 | 0 | 0 |
| 17 | (yen) | 47,986,600 | 0 | 0 |
| 18 | (yen) | 32,177,870 | 0 | 0 |
| 19 | (yen) | 1,040,185 | 0 | 0 |
| 20 | (US$) | 2,404 | 2,404 | 2,404 |
| 20 | (yen) | 45,612 | 0 | 0 |
| 21 | (US$) | 1,813 | 1,813 | 1,813 |
| 21 | (yen) | 46,124 | 0 | 0 |
| 22 | (US$) | 2,208 | 2,208 | 2,208 |
| 22 | (yen) | 46,160 | 0 | 0 |
| 23 | (US$) | 21,644 | 21,644 | 21,644 |
| 24 | (US$) | 7,350 | 7,350 | 7,350 |
| 24 | (yen) | 152,860 | 0 | 0 |
| 25 | (US$) | 4,758 | 4,758 | 4,758 |
| 25 | (yen) | 81,267 | 0 | 0 |
| 26 | (US$) | 3,639 | 3,639 | 3,639 |
| 27 | (US$) | 3,645 | 3,645 | 3,645 |
| 27 | (yen) | 146,742 | 0 | 0 |
| 28 | (US$) | 7,898 | 7,898 | 7,898 |
| 29 | (US$) | 3,269,044 | 0 | 0 |
| Totals | (yen) | 12,968,598,047 | 174,197,011 | 1,346,711 |
| | (US$) | 6,581,436 | 461,552 | 461,552 |
| | Total recommendation (US$) | | | 1,808,263 |

* As discussed in para. 65, above, loss element 3 will not be considered in this report. It will be reviewed by the "E2" Panel as a separate claim.

V. CLAIM OF DOWELL SCHLUMBERGER (MIDDLE EAST) INC.

200. Dowell Schlumberger (Middle East) Inc. ("Dowell"), a Panamanian corporation, is a member of a multinational group of companies which specializes in oil field services. Dowell describes its operations as including the provision of equipment, products, materials and engineering services to oil company clients.

201. On 14 September 1989, Dowell entered into a 2 year "service ticket" contract for the supply of coil tubing services with South Oil Company of Iraq ("South Oil"). On the same date the parties entered into a Supplemental Contract dealing specifically with services and rates in the area of Southern Iraq. Essentially, Dowell contracted with South Oil to provide specialized equipment used to pump nitrogen and other substances into oil wells. These services were to be provided as ordered by South Oil, pursuant to separate service tickets or work orders, at prices specified in the Supplemental Contract.

202. Accordingly, at 2 August 1991 Dowell had expatriate employees, coil tubing equipment including coil tubing units mounted on trucks, and spare parts and supplies, on site in the area of Basra, Iraq. Dowell claims the net amount of US$1,591,315 as a result of Iraq's unlawful invasion and occupation of Kuwait, summarized as follows:

Table 7. Dowell net claims

| Loss element | Claim (US$) |
|---|---|
| Unpaid accounts receivable | 362,209 |
| Loss of equipment | 815,640 |
| Loss of spares & supplies | 208,451 |
| Loss of furniture & personal effects | 27,851 |
| Loss of profits | 177,164 |
| Total | 1,591,315 |

## A. Unpaid accounts receivable

203. The Supplemental Contract specified that Dowell would issue monthly invoice summaries in United States dollars. The supplemental contract further required South Oil to pay 13.5 per cent of each monthly invoiced amount within 30 days in Iraqi dinars, with the remaining 86.5 per cent to be secured by promissory notes. The promissory notes were to be guaranteed by the Central Bank of Iraq, bearing interest of 5.5 per cent per annum, and were to be payable after 540 days from the date the monthly invoice summaries were submitted.

204. Dowell claims that South Oil owes to Dowell US$306,103 in unpaid receivables, and US$56,106 in interest on that amount. Five promissory notes were issued pursuant to the Supplemental Contract, dated between 2 May 1990 and 10 December 1990. These promissory notes secured the entire

principal amount outstanding with the exception of US$14,503, for which no promissory note was issued. Dowell claims that these amounts have not been paid as a direct result of Iraq's unlawful invasion and occupation of Kuwait.

205. The Panel's first task is to determine whether the claim for unpaid accounts receivable is within the jurisdiction of the Commission. Because the unpaid accounts receivable arose from a contractual obligation created prior to Iraq's unlawful invasion and occupation of Kuwait, the Panel must determine, as a threshold matter, (1) whether the claim is a debt or an obligation of Iraq and (2) whether it falls within the meaning of the "arising prior to 2 August 1990" limitation imposed by paragraph 16 of Security Council resolution 687 (1991).

206. The Panel finds that the accounts receivable that were unpaid by South Oil are a debt of Iraq within the meaning of Security Council resolution 687 (1991).

207. Next, the Panel must determine when this debt arose, and specifically whether the debt arose prior to 2 August 1990, as discussed in section II.C., supra.

208. The Panel finds that two promissory notes, dated 2 May 1990 and 16 May 1990, for a total amount of US$99,100 (plus US$8,176 in interest), were issued for services performed by Dowell before 2 May 1990. Accordingly, the Panel finds that these amounts are debts or obligations of Iraq that arose prior to 2 August 1990 within the meaning of paragraph 16 of resolution 687 (1991). As a result, the claim based on those 2 promissory notes is outside the jurisdiction of the Commission.

209. The Panel finds that three promissory notes, dated 1 June 1990, 20 July 1990 and 10 December 1990, for a total amount of US$192,500 plus US$15,882 in interest were issued for services performed by Dowell after 2 May 1990. Accordingly, the Panel finds that US$208,382 of the total amount claimed by Dowell is a debt or obligation of Iraq that arose after 2 August 1990 within the meaning of paragraph 16 of resolution 687 (1991). As a result, the claim based on these 3 promissory notes is within the jurisdiction of the Commission.

210. The Panel further finds that South Oil and the Central Bank of Iraq failed to pay the 3 promissory notes in the total amount of US$208,382 as a direct result of Iraq's unlawful invasion and occupation of Kuwait.

211. The Panel further finds that the claim for US$14,503, for which no promissory note was issued, must fail for lack of evidence. The balance of the claim, in the amount of US$ 32,048, represents interest on any award made by the Commission. This claim will not be addressed at this point.

212. As a resul , the Panel recommends an award of compensation to Dowell for unpaid accounts receivable in the amount of US$208,382.

B. Loss of equipment

213. Dowell also claims that its equipment in the vicinity of Basra, Iraq, including the coil tubing units mounted on trucks, were removed by Iraqi authorities at the "second outbreak of hostilities", which the claimant defines as the outbreak of hostilities between Iraq and coalition forces on or about 16 January 1991. Dowell seeks compensation for this equipment calculated based on landed replacement value in the total amount of US$815,640.

214. In support of this loss element, Dowell provided to the Commission a subsequently prepared list of these assets with their estimated replacement value. Dowell has not indicated the age or condition of the equipment. Dowell's auditors have confirmed the existence of the assets but not the age or valuation. Dowell has not provided to the Commission any contemporaneous documentation reflecting the value of these assets, or from which Dowell's valuation can be verified. Accordingly, this element of the claim must fail on evidentiary grounds.

215. As a result, the Panel recommends no compensation for Dowell's loss of equipment claim.

C. Loss of spare parts and supplies

216. In addition, Dowell claims that it was forced to abandon an inventory of spare parts and supplies in Iraq, and that this inventory was either taken by Iraqi authorities or destroyed by military activities. Dowell seeks compensation in the amount of US$208,451 as an estimate of the current landed replacement value of the spare parts and supplies. In the absence of a detailed inventory of these items (which was lost in Iraq), Dowell bases its claim on its average monthly expenditure on "supplies and maintenance", multiplied by 6 months, plus 35 per cent for freight. This leads to a figure of US$208,451, which Dowell claims as a "conservative" estimate of the spares on hand.

217. Dowell's auditors verified the amounts booked to Dowell's accounts for equipment and maintenance. This on its own is insufficient evidence, and Dowell did not respond to a request from the Panel that it segregate the equipment and maintenance costs, which is required as the maintenance costs would not be helpful in determining the value of spare parts and supplies on hand. Further, Dowell did not provide shipping documentation, which was also requested. This element of the claim must therefore fail on evidentiary grounds.

218. As a result, the Panel recommends no compensation for Dowell's loss of spare parts and supplies claim.

D. Loss of furniture and personal effects

219. Dowell also seeks compensation in the amount of US$27,851 for the furniture and personal effects of its expatriate employees in Iraq, which items were abandoned in Iraq when those employees were evacuated. In support of this claim Dowell has provided 5 invoices issued for customs purposes when the items were originally shipped into Iraq. Despite a request from the secretariat, Dowell has not however demonstrated that it incurred any expense with respect to the loss of these items by reimbursing its employees or otherwise. As such, this element of the claim must fail on evidentiary grounds.

220. As a result, the Panel recommends no compensation for Dowell's loss of furniture and personal effects claim.

E. Loss of profits

221. Finally, Dowell claims for its lost net income under the Supplemental Contract. This claim is calculated for the 12 months of 1990, and for 11 months in 1991 (up to the termination of the contract), based on anticipated net income of 10 per cent of anticipated revenue. Anticipated revenue was calculated based on the actual revenue for the first 7 months of 1990, prorated over the balance of the term of the contract. This actual revenue was supported by a statement from Dowell's auditors. In the end result, Dowell claims US$177,164 in lost anticipated net income.

222. Dowell has calculated this loss element over the entire 1990 year, although income was earned up to at least July of 1990. This income is at least in part the income which forms the basis of the accounts receivable claim, discussed above.

223. In calculating Dowell's loss of profits, the Panel has referred to decision 9, which sets forth certain methods for the valuation of losses relating to income-producing property. With the assistance of the Panel's consultants, this loss element has been recalculated to eliminate the pre-August 1990 claim, leading to a loss of net income of US$117,624. However, this assumes that Dowell's net income would have been 10 per cent of anticipated revenue. Despite a request from the Panel, Dowell has provided no evidence in support of its claim that its net income would have been 10 per cent of revenue. Dowell states that this figure is "standard" in the oilfield business. However, the Panel has noted that margins in the oilfield business vary widely, and the Panel does not find that there was a standard margin in the oilfield business at the relevant time. Further, Dowell has not provided any evidence which would allow the Panel or its consultants to conclude that a lower or any margin should be applied, and

there is no evidence of Dowell's overall profitability in this region. As such, this element of the claim must fail on evidentiary grounds.

224. As a result, the Panel recommends no compensation for Dowell's loss of profits claim.

## F. Recommended award

225. The recommendations of the Panel can be summarized as follows:

Table 8. Dowell recommended compensation

| Loss element | Claim (US$) | Recommendation (US$) |
|---|---|---|
| Unpaid accounts receivable | 362,209 | 208,382 |
| Loss of equipment | 815,640 | 0 |
| Loss of spare parts & supplies | 208,451 | 0 |
| Loss of furniture & personal effects | 27,851 | 0 |
| Loss of profits | 177,164 | 0 |
| Total | 1,591,315 | 208,382 |

# VI. CLAIM OF SHAFI BIN JABER & BROS CO.

226. Shafi Bin Jaber & Bros. ("Shafco") is a limited partnership company registered in Dhahran, Saudi Arabia. Shafco describes itself as operating an automobile, truck and heavy equipment rental business. On 21 April 1987 Shafco entered into a four-year memorandum of agreement (the "Leasing Contract") with KOC and Getty Oil Company (together, the "Joint Operations") to lease certain heavy equipment and vehicles (the "Machinery") to the Joint Operations for use at the Wafra Oil Field ("Wafra") in the Kuwaiti sector of the Partitioned Neutral Zone between Saudi Arabia and Kuwait. Pursuant to the Leasing Contract, Shafco also provided personnel to operate and maintain the Machinery and built a maintenance workshop and garage at Wafra. The term of the Leasing Contract commenced on 15 November 1987.

227. Shafco claims that on 3 August 1990 Iraqi troops compelled it to end its operations at Wafra; as a result, the Joint Operations invoked the "force majeure" clause of the Leasing Contract on 21 August 1990, depriving Shafco of further revenues from the Leasing Contract. Shafco also claims that Iraqi troops stole the Machinery and tools and spare parts related thereto and caused extensive damage to certain portable accommodation and service facilities owned by Shafco (the "Portables"). Further, Shafco alleges that as a result of such losses it was not awarded a new contract for the provision of services similar to those covered under the Leasing Contract to the Joint Operations after the liberation of Kuwait.

228. Shafco seeks compensation in the amount of SR1 31,270,628, net of interest and claim preparation costs, for losses suffered as a result of Iraq's unlawful invasion and occupation of Kuwait. Shafco's claim is summarized as follows:

Table 9. Shafco net claims

| Loss element | Claim (SR1) |
|---|---|
| Loss of profit | 12,157,470 |
| Machinery | 17,850,515 |
| Spare parts | 354,569 |
| Tools & instruments | 118,449 |
| Tyres | 111,842 |
| The Portables & their contents | 246,117 |
| Financial obligations with respect to real property | 431,666 |
| Total | 31,270,628 |

A. Loss of profit

229. Shafco seeks compensation in the amount of SRl 12,157,470 for loss of income resulting from the termination of the Leasing Contract. This element of Shafco's claim has two components: First, Shafco alleges that Iraq's unlawful invasion and occupation of Kuwait caused it to fail to earn income under the Leasing Contract for the remainder of its term, a period of 15.5 months plus a six-month extension period. Second, Shafco alleges that income could have been earned from use of the Machinery after the expiration of the Leasing Contract for a period of 42 months, which Shafco claims is the remainder of the Machinery's useful economic life.

230. To calculate its lost profits, Shafco subtracted certain expenditures not incurred after 2 August 1990 from revenues expected during the term of the Leasing Contract and after its end.

231. In support of this loss element Shafco has provided the Leasing Contract, audited financial statements of Shafco with respect to periods both prior and subsequent to Iraq's invasion of Kuwait (the "Financial Statements") and contractual documentation relative to Shafco's failed bid to be awarded a new contract to provide heavy equipment and vehicles to the Joint Operations after the liberation of Kuwait.

232. The Panel finds that, as a result of Iraq's unlawful invasion and occupation of Kuwait, Shafco was unable to continue its performance under the Leasing Contract after 2 August 1990. It therefore turns its attention to the valuation of the resulting loss; in performing such valuation, the Panel has referred to decision 9, which sets forth certain methods for the valuation of losses relating to income-producing property.

233. The Panel is not persuaded by Shafco's claim that the term of the Leasing Contract would have been extended by six months pursuant to its extension clause. A written invocation of such clause by the Joint Operations would have been required in order for the term of the contract to be extended. Shafco has not provided evidence of such an invocation; nor has it shown that, if Iraq had not invaded Kuwait, it would have been likely to occur.

234. The Panel also rejects Shafco's assumption that, if Iraq's unlawful invasion and occupation of Kuwait had not occurred, it would have entered into a new contract to lease the Machinery to the Joint Operations at the end of the term of the Leasing Contract. Shafco argues that such a renewal of the Leasing Contract would have been foreseeable based on the prior practice of the Joint Operations and on certain logistical advantages of incumbency; it has not, however, provided documentary evidence in support of this assertion. Shafco's assertion that it would continue to derive income from the Machinery during the term of a second contract with the Joint Operations must therefore fail on evidentiary grounds.

235. Accordingly, the Panel finds that Shafco's loss of profits should be calculated over 15.5 months, the remaining term of the contract.

236. The Panel has, with the assistance of its consultants, therefore recalculated Shafco's claimed loss of profits. Specifically, it has subtracted costs with respect to Shafco's performance under the Leasing Contract from revenues expected by Shafco under such contract between 2 August 1990 and the end of its term. Such revenues were calculated by multiplying the "total monthly price" as stated in the Leasing Contract by 15.5 months, the remainder of the term of such contract. Costs were calculated based on historical "project costs" and "general and administrative expenses" stated in Shafco's Financial Statements for the first 7 months of 1990 and adjusted to reflect the relative contribution of the Leasing Contract to Shafco's overall performance.

237. Based on that calculation, the Panel finds that Shafco lost SR1 1,516,668 in profits as a direct result of Iraq's unlawful invasion and occupation of Kuwait and recommends that compensation be awarded in the United States dollar equivalent of that amount.

B. Machinery

238. Shafco seeks compensation in the amount of SR1 17,850,515 for Machinery allegedly stolen by Iraqi forces. Such amount represents the claimed value of the Machinery on 2 August 1990.

239. The Machinery was purchased by Shafco with funds borrowed from Trans Arabian Leasing Establishment ("Trans Arabian"). The documentation that governs such loan states that the Machinery is to remain the property of the lender until interest and principal on the loan are paid in full. A certificate of Trans Arabian that was provided shows that, on 11 October 1998, the loan had not yet been repaid and that title to the Machinery had not therefore passed to Shafco. However, another document shows that Trans Arabian had assigned its right to advance claims with respect to the Machinery to Shafco. No claim has been filed with the Commission by Trans Arabian, its owner, or any secured party under the loan agreement. The Panel accordingly finds that Shafco may properly advance a claim with respect to this loss element before the Commission.

240. In support of this loss element, Shafco has also provided the Leasing Contract, which contains specifications with respect to the Machinery, an extract of Shafco's asset register as of 31 July 1990 with original purchase prices of the Machinery, evidence of registration of the Machinery with the Ministry of the Interior of Saudi Arabia, a statement from the Ministry of the Interior of Saudi Arabia with respect to the cancellation of the registration of the Machinery with such ministry, witness statements with respect to looting by Iraqi troops at Wafra, and the Financial Statements.

241. The Panel finds that, together, the Leasing Contract, the documentation from the Ministry of the Interior of Saudi Arabia and witness statements provided by Shafco represent credible evidence of Shafco's legal responsibility for the Machinery prior to 2 August 1990 and of the subsequent looting of items of the Machinery by Iraqi troops. The Panel therefore turns its attention to Shafco's valuation of the resulting loss.

242. Shafco has calculated its claimed loss with respect to this loss element by adjusting the purchase price of the Machinery for inflation and depreciation to 2 August 1990. The Panel finds that this methodology is appropriate, and that Shafco employed accurate depreciation rates in calculating its loss. However, the Panel finds that Shafco has overstated the original purchase price of Machinery with respect to which compensation can be awarded and the inflation rate used in the calculation of its claimed loss.

243. Specifically, Shafco claims that the original purchase price of the Machinery, confirmed by reference to an asset register that sets forth the purchase prices of individual items, was SRl 21,937,097. Witness statements provided by Shafco show generally that items of Machinery were looted by Iraqi troops at Wafra. These do not, however, specify which of the items listed in the asset register were taken. The Panel has considered the possibility that, because of the mobility of the Machinery and its proximity to the border with Saudi Arabia, individual items were driven to safety immediately prior to the arrival of Iraqi troops at Wafra. The Panel has therefore relied on a statement of the Ministry of the Interior of Saudi Arabia with respect to the cancellation of registration of items of Machinery with such ministry in its determination of which of the items listed in the asset register may properly be included in Shafco's claim. This statement does not cover all items of Machinery listed in the asset register. The Panel finds that there is insufficient evidence that items not covered by such statement were looted and accordingly the Panel decreases the original purchase price of the Machinery with respect to which compensation can be awarded to SRl 19,137,669.

244. In addition, the Panel finds that the 7 per cent annual inflation rate employed by Shafco in the determination of the replacement value of the Machinery is overstated. After considering the opinion of its consultants, the Panel finds that a 2.5 per cent annual inflation rate is appropriate.

245. The Panel accordingly recalculated Shafco's claimed loss with respect to Machinery based on the revised original purchase price and annual inflation rate and the estimated depreciation rates set forth by Shafco. In doing so, it assigned to certain entirely depreciated items a residual value of 15 per cent of their original purchase prices.

246. Based on such calculation the Panel finds that, as a result of Iraq's invasion and occupation of Kuwait, Shafco suffered a loss equal to SR1 14,027,847 with respect to Machinery and recommends that compensation be awarded in the United States dollar equivalent of that amount.

C. Spare parts

247. Shafco seeks compensation in the amoun SR1 354,569 for losses with respect to spare parts allegedly stolen by Iraqi forces.

248. Shafco states that the value of the spare parts is stated in the Financial Statements. According to the Financial Statements, spare parts held by Shafco had exactly the same value in 1987, 1988, 1989 and the first 7 months of 1990. Shafco explains this uniformity by claiming that the stock of spare parts was always maintained at the same level by immediately replacing used spare parts. It has not, however, provided documentary evidence in support of this statement; instead, it claims that records of inventory counts with respect to the spare parts were kept at Wafra and lost during Iraq's occupation of Kuwait.

249. The Panel finds that, without supporting evidence, Shafco's assertion that spare parts at Wafra were immediately replaced when used is not credible because it contradicts ordinary business practices. The Panel also considers that the fact that identical values with respect to spare parts are stated in Financial Statements between 1997 and 31 July 1990 suggests that the original purchase price of the spare parts was repeated each year and that inventory counts of the spare parts were not taken.

250. The Panel finds that Shafco's claim with respect to this loss element must fail on evidentiary grounds and accordingly recommends that no compensation be awarded.

D. Tools and instruments

251. Shafco seeks compensation in the amount of SR1 118,449 for losses with respect to tools and instruments allegedly stolen by Iraqi forces.

252. In support of this loss element, Shafco has provided the Leasing Contract, which contains specifications with respect to required tools and instruments, and an extract of an asset register listing tools and instruments located at Wafra on 31 July 1990 with an original purchase price of SR1 118,449 and a net value after depreciation of SR1 13,998.

253. The Panel finds that Shafco has presented credible evidence of looting by Iraqi forces at Wafra and that the tools and instruments listed in the asset register correspond to those required by the Leasing Contract. In addition the Panel finds, based on the opinion of its consultants, that Shafco has applied appropriate depreciation rates with respect to the tools

and instruments. The Panel therefore finds that Shafco has suffered a loss in the amount of the depreciated value of the tools and instruments at 2 August 1990.

254. Accordingly, the Panel recommends that compensation in the United States dollar equivalent amount of SR1 13,998 be awarded with respect to this loss element.

## E. Tyres

255. Shafco seeks compensation in the amount of SR1 111,842 for losses with respect to tyres allegedly stolen by Iraqi forces.

256. In support of this loss element, Shafco has provided an invoice showing that on 29 July 1990 it purchased tyres for which it was charged the claimed amount of SR1 111,842.

257. The Panel finds that Shafco has presented credible evidence of looting by Iraqi forces at Wafra and that the invoice provided is sufficient evidence that the tyres were purchased. The Panel also finds that, having been purchased on 29 July 1990, it is probable that the tyres had not yet been used on 2 August 1990.

258. The Panel accordingly recommends that compensation in the United States dollar equivalent amount of SR1 111,842 be awarded with respect to this loss element.

## F. The Portables and their contents

259. Shafco seeks compensation in the amount of SR1 148,669 for losses with respect to the Portables and SR1 97,448 for losses with respect to air conditioning units and furnishings of the Portables. Shafco claims that such items were either irremediably damaged or looted by Iraqi forces. According to Shafco, the amounts claimed represent the replacement costs of the Portables and their contents on 2 August 1990.

260. In support of this loss element, Shafco has provided certain invoices relative to the purchase of the Portables and their contents, witness statements, certain photographs taken at Wafra after the end of Iraq's occupation of Kuwait and an extract from an asset register of Shafco dated as of 31 July 1990.

261. The Panel finds that, together, the invoices, the extract from the asset register, the photographs and the witness statements provided by Shafco represent credible evidence of Shafco's ownership of the Portables and their contents on 2 August 1990 and of the subsequent looting or destruction of such items by Iraqi troops. The Panel therefore turns its attention to Shafco's valuation of the resulting loss.

1. The Portables

262. Shafco has calculated its claimed loss with respect to the Portables by adjusting the purchase price of the Portables, plus charges incurred with respect to their installation, for inflation and depreciation to 2 August 1990. The Panel finds that this methodology is appropriate. In addition, the Panel finds that the original purchase price employed by Shafco is confirmed by evidence provided to the Commission and that the claimed installation charges are reasonable.

263. However, the Panel believes that the 6.67 per cent annual inflation rate employed by Shafco in the determination of the replacement value of the Portables is overstated. After considering the opinion of its consultants, the Panel finds that a 2.5 per cent annual inflation rate is appropriate.

264. The Panel also believes that the cumulative 25 per cent depreciation rate employed by Shafco in calculating the replacement cost of the Portables is understated. After considering the opinion of its consultants, the Panel finds that a cumulative depreciation rate of approximately 34 per cent is appropriate.

265. Having recalculated Shafco's claimed loss with respect to the Portables based on the revised annual inflation rate and cumulative depreciation rate, the Panel finds that Shafco suffered a loss equal to SR1 121,152 with respect to the Portables. Accordingly, the Panel recommends that compensation with respect to the Portables be awarded in the United States dollar equivalent of that amount.

2. Contents of the Portables

266. In support of its claim with respect to the contents of the Portables, Shafco has provided an extract from an asset register dated as of 31 July 1990 and a bundle of invoices. Because the invoices were not translated from the Arabic and have otherwise proved to be illegible, the Panel has relied on the asset register extract to determine the magnitude of Shafco's claimed loss.

267. The asset register confirms the purchase prices stated by Shafco in its statement of claim but lists the contents as having a depreciated net value of SR1 22,931 on 31 July 1990, substantially less than Shafco's claimed loss. It is apparent, therefore, that the depreciation rate employed to calculate the depreciated net values stated in the asset register was considerably higher than that used by Shafco in the calculation of its claimed loss.

268. Because Shafco has not provided an explanation and evidence of why the asset register depreciation rate should not be employed to calculate

its loss with respect to the contents of the portables, the Panel recommends that compensation in the United States dollar equivalent amount of SR1 22,931 be awarded.

G. Financial obligations with respect to real property

269. Shafco seeks compensation in the amount of SR1 431,666 for losses with respect to financial obligations of Shafco. Pursuant to the Leasing Contract, Shafco was required to build a workshop and other buildings (the "Buildings") at Wafra; the ownership of such Buildings was to pass to the Joint Operations at the end of the term of the Leasing Contract. To finance such construction, Shafco entered into a financing arrangement (the "Financing Contract") with Trans Arabian.

270. Shafco claims that the Buildings were completed prior to Iraq's invasion of Kuwait. However, pursuant to the Leasing Contract these were to become the property of the Joint Operations at the latest at the end of its term. Accordingly, title to the Buildings passed to the Joint Operations when the Leasing Contract was terminated as a result of Iraq's unlawful invasion and occupation of Kuwait. Shafco nevertheless remained responsible for payments under the Financing Contract.

271. In support of this loss element Shafco has provided to the Commission the Financing Contract and a payment schedule worksheet showing payments to be made by Shafco under the Financing Contract. Shafco has also provided an agreement between Shafco and Trans Arabian, dated 21 August 1991, which states that Shafco's debt under the Financing Contract is rescheduled to an unspecified date, and a certificate of Trans Arabian which states that, as of 11 October 1998, Shafco owed SR1 1,110,004 under the Financing Contract.

272. The Panel finds that this documentation shows that Trans Arabian had made a loan of SR1 1,480,000 to Shafco with respect to the Buildings and that on 11 October 1998 Shafco still owed Trans Arabian a sum which exceeds the amount claimed by Shafco under this loss element. The Panel has already found that, as a result of Iraq's unlawful invasion and occupation of Kuwait, Shafco was deprived of revenues from the Leasing Contract after 2 August 1990; it cannot, therefore, draw on such revenues to repay its debt to Trans Arabian. The Panel has determined, with the assistance of its consultants, that Shafco's financial obligations with respect to the Buildings were deducted from revenues from the Leasing Contract to calculate Shafco's lost profits. It therefore finds that compensation recommended for this loss element would not duplicate any part of the compensation recommended with respect to Shafco's lost profits.

273. The Panel accordingly finds that Shafco has suffered a loss of at least SR1 431,666 and recommends that compensation be awarded in the United States dollar equivalent of that amount.

## H. Recommended award

274. The recommendations of the Panel can be summarized as follows:

Table 10. Shafco recommended compensation

| Loss element | Claim (SR1) | Recommendation (SR1) | Recommendation (US$) |
|---|---|---|---|
| Loss of profit | 12,157,470 | 1,516,668 | 404,985 |
| Machinery | 17,850,515 | 14,027,847 | 3,745,754 |
| Spare parts | 354,569 | 0 | 0 |
| Tools & instruments | 118,449 | 13,998 | 3,738 |
| Tyres | 111,842 | 111,842 | 29,864 |
| The Portables & their contents | 246,117 | 144,083 | 38,473 |
| Financial obligations with respect to real property | 431,666 | 431,666 | 115,265 |
| Total | 31,270,628 | 16,246,104 | 4,338,079 |

# VII. CLAIM OF CAPE EAST LIMITED

275. Cape East Limited ("Cape"), a corporation registered in the United Kingdom, is a specialist insulation and scaffolding contractor. Cape states that at 2 August 1990 it had "recently" completed a contract for Kuwait National Petroleum Corporation at Mina Abdulla Refinery for piping and thermal insulation work. In addition, Cape was active as a subcontractor on a project in Basra, Iraq. The net claims advanced by Cape can be summarized as follows:

Table 11. Cape net claims

| Loss element | Claim (US$) | Claim (£ stg.) | Claim (KD) |
|---|---|---|---|
| Loss of tangible property | 759,000 | 30,246 | 10,465 |
| Evacuation costs | | 19,850 | |
| Total 21/ | 759,000 | 50,096 | 10,465 |

## A. Loss of tangible property

### 1. Machinery and stocks

276. Cape states that it had machinery and stocks at a shipping terminal in Basra, Iraq. Cape states that the machinery and stocks were left at Basra as a result of Iraq's unlawful invasion and occupation of Kuwait and were not subsequently recovered. In support of this aspect of the claim Cape has provided a list of machinery and stocks with an ascribed value of £ stg. 30,246, which is the amount claimed. Original purchase invoices are provided as evidence, and Cape states that these invoice amounts exceed the amount claimed.

277. Cape was asked to explain why the invoices provided in support of the claim for machinery and stocks exceed the amount claimed. In response, Cape points to an advance received from the main contractor. However, Cape's initial submission noted that certain of the items in question had been utilized. Indeed, the supporting invoices were addressed to the main contractor (for customs purposes), and they reflect the fact that the largest portion of this claim is for insulation materials. The Panel notes that it has no information as to whether these insulation materials were incorporated into the Basra project, or whether their ownership had passed to the contractor.

278. With the assistance of its consultants, the Panel has identified one invoice for machinery and equipment that the Panel is satisfied relates to machinery owned by Cape which would not have been incorporated into the Basra project. That invoice is for Dh 29,500. Based on the advice of its consultants, the Panel is satisfied that this equipment would have retained

a value of no less than 50 per cent of the invoice value, and accordingly the Panel recommends an award of Dh 14,750. The balance of the claim for machinery and stocks must fail on evidentiary grounds.

2. Scaffolding

279. Cape also claims for a large quantity of scaffolding held at Wafra, Kuwait. Cape states that this scaffolding was abandoned at Wafra as a result of Iraq's unlawful invasion and occupation of Kuwait, and was therefore not recovered. In support of this claim, Cape has provided a statement indicating a claim for 42,000 linear metres of scaffolding at US$759,000. Invoices are also provided for the scaffolding, although these total only Dh 253,459. Cape states that the remainder of the scaffolding invoices were destroyed in Kuwait. Cape has also provided documents related to its contract in Kuwait.

280. The Panel is satisfied from the evidence presented that there was a quantity of scaffolding on site, which was not recovered as a result of Iraq's unlawful invasion and occupation of Kuwait. With the assistance of its consultants, the Panel has determined that the majority of the scaffolding was in the range of 2.5 years old, and that the majority of the value of the claim is for scaffolding boards. Based on the advice of its consultants, the Panel has determined that scaffolding boards of this type and in this location would have a maximum useful life of approximately 4 years. Accordingly, the Panel finds that the value of this loss is the residual value of the scaffolding (for its remaining 1.5 years of useful life), applied only to the scaffolding for which invoices have been provided, which amounts to Dh 95,047. Accordingly, the Panel recommends compensation of the United States dollar equivalent amount of Dh 95,047 for this loss element.

3. Apartment contents

281. Cape claims that it had personal property and documentation located at its manager's apartment in Kuwait, which items were not recovered as a result of Iraq's unlawful invasion and occupation of Kuwait. This personal property included electronic equipment such as a facsimile machine, and various items of furniture. In support of this claim Cape provides a list of the missing items, prepared from information provided by the claimant's Kuwaiti manager, with a total listed value of KD 10,465. Cape states that supporting invoices are unavailable as these documents were destroyed in Kuwait.

282. The Panel notes that Cape has not provided any witness statement or other documentation in support of the list of apartment contents, or the ownership of the subject items. The Panel has no primary or contemporaneous documentation from which it can verify the fact of the loss or the amounts claimed. The Panel requested a statement of the approximate

age of the lost items, which was not provided by Cape. In the circumstances, the Panel has been unable to quantify the value of this loss and accordingly recommends no compensation for this loss element.

B. Evacuation costs

283. Finally, Cape claims its costs associated with the evacuation of "relevant personnel", which it describes as being 11 workers from Basra, Iraq, and 1 manager plus his family from Kuwait. Cape claims £ stg. 19,850 for these costs, supported by various invoices and airline tickets issued in other currencies.

284. One of the documents provided by Cape in support of this claim is a debit note from the main contractor on the Basra project, indicating that the contractor paid for the initial evacuation costs and charged these costs back to Cape. As this debit note was accepted by Cape, in the amount of US$37,819, the Panel finds that this is the amount paid by Cape for the evacuation of its personnel from Iraq and Kuwait. Accordingly, the Panel recommends compensation for this loss element in the amount of US$37,819. 22/

C. Recommended award

285. The recommendations of the Panel can be summarized as follows:

Table 12. Cape recommended compensation

| Loss element | | Claim | Recommendation (Original currencies) | Recommendation (US$) |
|---|---|---|---|---|
| Loss of tangible property | (US$) | 759,000 | 0 | 0 |
| | (£ stg.) | 30,246 | 0 | 0 |
| | (KD) | 10,465 | 0 | 0 |
| | (Dh) | | 109,797 | 29,909 |
| Evacuation costs | (£ stg.) | 19,850 | 0 | |
| | (US$) | | 37,819 | 37,819 |
| Totals | (US$) | 759,000 | 37,819 | 37,819 |
| | (£ stg.) | 50,096 | 0 | 0 |
| | (KD) | 10,465 | 0 | 0 |
| | (Dh) | | 109,797 | 29,909 |
| | | Total recommendation | | (US$) 67,728 |

# VIII. CLAIMS OF HALLIBURTON CLAIMANTS

A. Background

286. As discussed in paragraph 6, supra, the Halliburton Claimants are related corporations that have advanced similar claims based on similar forms of proof, including similar accounting records and policies. The amounts claimed, net of interest and claim preparation cost claims, are summarized as follows:

Table 13. Summary of Halliburton Claimants' claims

| Claimant | Claim item | Claim (US$) |
|---|---|---|
| Halliburton Company | Decline in operating income | 1,071,000 |
| | Compensation paid to others | 383,549 |
| | Sub-total | 1,454,549 |
| Halliburton Geophysical | Compensation paid to others | 315,613 |
| | Contract losses | 12,371,975 |
| | Sub-total | 12,687,588 |
| Halliburton Logging 23/ | Contract losses | 3,990,436 |
| | Sub-total | 3,990,436 |
| Otis Engineering | Decline in operating income | 2,375,000 |
| | Compensation paid to others | 609,010 |
| | Contract losses | 2,011,422 |
| | Loss of tangible property | 367,624 |
| | Bank accounts, securities and other intangibles | 346,109 |
| | Sub-total | 5,709,165 |
| Halliburton Limited 24/ | Decline in operating income | 1,708,000 |
| | Compensation paid to others | 1,026,791 |
| | Loss of tangible property | 8,887,752 |
| | Bank accounts, securities and other intangibles | 138,132 |
| | Sub-total | 11,760,675 |
| | Total | 35,602,413 |

287. As at 2 August 1990 the Halliburton Claimants provided a broad range of services and products used in the exploration, development and production of oil and gas to energy sector clients throughout the Middle East.

288. More specifically, and as it relates to matters before the Commission, Halliburton Company provided well cementing, stimulation and water control services to customers in Saudi Arabia and in the Partitioned Neutral Zone between Saudi Arabia and Kuwait. Halliburton Geophysical Services, Inc. ("Halliburton Geophysical") provided geophysical expertise and equipment to customers in Saudi Arabia and Iraq. Halliburton Logging Services, Inc. ("Halliburton Logging") provided well logging services and

equipment, including well logging trucks, to the Arab Well Logging Company ("AWLCO") of Iraq. Otis Engineering Corporation ("Otis Engineering") provided well completion and reworking services and equipment to customers in Kuwait, Iraq and Saudi Arabia.

289. Halliburton Limited operated in Kuwait providing a broad range of oil field services through unincorporated divisions mirroring the specialized Halliburton Claimants operating outside of Kuwait. So, for example, Halliburton Limited provided specialized services in Kuwait through its "Halliburton Logging Services" and "Otis Engineering" divisions.

290. As there is a significant similarity among the loss elements advanced by the Halliburton Claimants, these claims will be presented together and analysed in this report by loss type.

### B. Declines in operating income

291. Three of the Halliburton Claimants (Halliburton Company, Otis Engineering and Halliburton Limited) advance claims for overall declines in operating income resulting from Iraq's unlawful invasion and occupation of Kuwait. In assessing these claims, and the evidence filed in support of these claims, the Panel has referred to decision 9, which sets forth certain methods for the valuation of losses relating to income-producing property, and the Panel has carefully considered issues of causation and mitigation.

#### 1. Halliburton Company decline in operating income

292. Prior to Iraq's unlawful invasion and occupation of Kuwait, Halliburton Company provided well cementing, stimulation and water control services to the Saudi Arabian Oil Company ("Saudi Aramco") and to the Arabian Oil Company ("AOC"). These services were provided pursuant to general services contracts on a service ticket basis, whereby the customer would issue orders which would then be governed by the general services contracts.

293. Halliburton Company claims that it suffered a decline in business activity in Saudi Arabia and in the Partitioned Neutral Zone, after the invasion of Kuwait, as a result of the build-up of military forces and the threat of an imminent Iraqi invasion of Saudi Arabia. Halliburton Company also claims that business expenses in Saudi Arabia increased during the occupation of Kuwait, and that productivity decreased as a result of missile attacks and concerns by employees for their personal safety.

294. As a result, Halliburton Company claims that it suffered an operating income decline of US$1,071,000, composed of both a decrease in revenue and an increase in expenses. This figure was calculated by comparing monthly revenue and operating income averages for the 6 month period ending in June 1990 with the monthly revenue and operating income averages for the period August 1990 to the end of March 1991.

295. With the assistance of its consultants and the secretariat, the Panel has conducted an extensive review of Halliburton Company's claim that it suffered a decline in operating income. This review involved a detailed analysis of Halliburton Company's financial records, including its management accounts both before and after Iraq's unlawful invasion and occupation of Kuwait. The Panel also requested and reviewed Halliburton Company's service ticket register for the relevant period, and a sample of large supporting service tickets. Finally, the Panel reviewed the underlying service ticket contracts as well as affidavits provided by the Halliburton Claimants outlining the effects of the invasion on their businesses.

296. Based on the foregoing, the Panel is satisfied that Halliburton Company did suffer a decline in operating income for the period August 1990 through March 1991. The Panel quantifies this decline by comparing Halliburton Company's monthly operating income average for the 7 months ending July 1990 with the monthly operating income actually achieved for the period August 1990 to the end of March 1991. This leads to a total decline in operating income for Halliburton Company of US$1,051,000, and the Panel recommends that this amount be awarded to Halliburton Company.

### 2. Otis Engineering decline in operating income

297. Prior to Iraq's unlawful invasion and occupation of Kuwait, Otis Engineering provided well completion products and services to customers in Saudi Arabia, including the Saudi Arabian Oil Company ("Saudi Aramco") and the Arabian Oil Company ("AOC"). The majority of these services were provided on a service ticket basis, whereby the customer would issue orders which would then be governed by general services contracts .

298. Otis Engineering claims that it suffered a decline in business activity in Saudi Arabia and in the Partitioned Neutral Zone, after the invasion of Kuwait, as a result of the buildup of military forces and the threat of an imminent Iraqi invasion of Saudi Arabia. Otis Engineering also claims that business expenses in Saudi Arabia increased during the occupation of Kuwait, and that productivity decreased as a result of missile attacks and concerns by employees for their personal safety.

299. As a result, Otis Engineering claims that it suffered an operating income decline of US$2,375,000, composed of both a decrease in revenue and an increase in expenses. This figure was calculated by comparing monthly

revenue and operating income averages for the 6 month period ending in June 1990 with the monthly revenue and operating income averages for the period July 1990 to the end of February 1991.

300. With the assistance of its consultants and the secretariat, the Panel has conducted an extensive review of Otis Engineering's claim that it suffered a decline in operating income. This review involved a detailed analysis of Otis Engineering's financial records, including management account summaries. Otis Engineering has advised the Panel that a number of the source accounting documents (the expense statements) for the management account summaries are missing pre-1992. The Panel also requested and reviewed Otis Engineering's service ticket register for the relevant period, and a sample of large supporting service tickets. Finally, the Panel reviewed the underlying general services contracts as well as affidavits provided by the Halliburton Claimants outlining the effects of Iraq's unlawful invasion and occupation of Kuwait on their businesses.

301. The Panel was not able to verify from the records provided the fact or amount of Otis Engineering's decline in operating income in Saudi Arabia. Specifically, the pre-1992 expense statements of this claimant could not be located. Further, the Panel's consultants were only able to match 67 per cent of the service tickets reviewed as against Otis Engineering's own service ticket register. As the management account summaries are based at least partially on expense statements which are missing, and as the service ticket register could not be matched with a sufficient degree of confidence with its primary documents (the service tickets themselves), the Panel has serious concerns about both the revenue and expense aspects of Otis Engineering's claim that it suffered a decline in operating income. As such, this element of the claim must fail on evidentiary grounds.

302. As the Panel is not recommending an overall award for a decline in operating income for Otis Engineering, it is making a recommendation for an award to compensate Otis Engineering for specific proved extraordinary expenses that formed a part of that claimed decline in operating income (see paras. 319-320, infra).

### 3. Halliburton Limited decline in operating income

303. Halliburton Limited has advanced a claim for a decline in operating income, in this case based on the complete cessation of its business in Kuwait during its occupation, in the amount of US$1,708,000. Halliburton Limited had also worked primarily on a service ticket basis for its principal customers KOC and the Joint Operations in the Partitioned Neutral Zone between Kuwait and Saudi Arabia. As noted above, Halliburton Limited performed a wide range of oilfield service work in Kuwait, operating through unincorporated divisions which mirrored the more specialized Halliburton companies which operated primarily outside Kuwait.

304. The Halliburton Limited claim for loss of operating income was calculated by comparing, for each of its unincorporated divisions, the revenue and operating income figures for the 6 month period ending June 1990 with the period starting August 1990 and ending when pre-invasion profitability levels were again achieved (between April and August 1991).

305. With the assistance of its consultants and the secretariat, the Panel has conducted an extensive review of Halliburton Limited's claim based on a loss of operating income. This review involved a detailed analysis of Halliburton Limited's financial records, including divisional management accounts. The Panel also reviewed the contract documents between Halliburton Limited and its customers KOC and the Joint Operations.

306. The Panel has quantified Halliburton Limited's loss of operating income as a result of Iraq's unlawful invasion and occupation of Kuwait by comparing Halliburton Limited's monthly operating income average for the 7 months ending July 1990 with the monthly operating income achieved between August 1990 and when divisional pre-invasion profitability levels were again achieved (between April and August 1991). This leads to a total decline in operating income for Halliburton Limited of US$965,286, and the Panel recommends that this amount be awarded to Halliburton Limited.

### 4. Causation and mitigation

307. The Panel has recommended awards for operating income declines for Halliburton Company and Halliburton Limited. In doing so, the Panel specifically finds that these losses resulted directly from Iraq's unlawful invasion and occupation of Kuwait. In the case of Halliburton Company, this finding is based on a review of the underlying service tickets. This review has satisfied the Panel that the declines in operating income occurred in the Partitioned Neutral Zone and in nearby areas of Saudi Arabia directly affected by military activities. In the case of Halliburton Limited, the decline in operating income was suffered in Kuwait as a result of the complete cessation of the claimant's business.

308. The Panel has also determined that the declines in operating income suffered by Halliburton Company and Halliburton Limited do not simply represent work that was deferred as a result of Iraq's unlawful invasion and occupation of Kuwait; rather this work was lost to these claimants and this loss led to a compensable decline in operating income.

309. The Panel has noted that both Halliburton Company and Halliburton Limited quickly returned to pre-invasion profitability levels after the liberation of Kuwait, and that they then earned profits significantly exceeding the pre-invasion profit levels of those claimants.

310. The Panel has not offset any of these post-liberation profits against the losses suffered by Halliburton Company and Halliburton Limited because the Panel has determined that these unusual profit levels were earned as a result of increased business activity associated with the reconstruction of Kuwait and the larger than normal volumes of oil produced by Saudi Arabia during this period of time and not of an increase in or a return in volume or profitability of the pre-invasion core business activities of Halliburton Company and Halliburton Limited in Kuwait and Saudi Arabia; rather, the post-liberation work undertaken by these claimants was substantially different in type and quantity from their pre-invasion activities.

311. In coming to this conclusion, the Panel notes that the pre-invasion activity of Halliburton Company and Halliburton Limited in these countries was the routine provision of services associated with the orderly production of oil in predictable quantities from a well established oil field infrastructure.

312. By contrast, the Panel finds that in the post-liberation period in Kuwait and Saudi Arabia there existed a unique and temporary economic opportunity to provide highly specialized oil field services and supplies. Halliburton Company and Halliburton Limited (or their successors) sought and obtained contracts arising from this economic opportunity, as did many oil field supply and service companies from around the world, including companies that had previously conducted little or no work in the Persian Gulf. The Panel has concluded that it would be incorrect to set-off profits associated with the exploitation of this unique and temporary economic opportunity as against losses suffered during the occupation of Kuwait, as those losses resulted from a decline in work of an essentially different nature from the work undertaken by these claimants in the post-liberation period.

313. In short, a reduction in any award to Halliburton Company and Halliburton Limited based on post-liberation profits would, on the specific facts of those cases, be a finding that profits earned from an essentially new enterprise providing new products and services to the Kuwaiti and Saudi Arabian markets should be offset against losses suffered in the claimants' traditional fields of work. The Panel notes that such a finding would not be in keeping with traditional principles of mitigation.

314. The Panel specifically finds that its recommendations must:

> "... as far as possible, wipe out all the consequences of the illegal act and re-establish the situation which would in all probability, have existed if that act had not been committed." 25/

In this case, the consequences of Iraq's unlawful invasion and occupation of Kuwait on the Halliburton Claimants would not be eliminated by a

recommendation which included a deduction from the claim based on revenue earned in a purely collateral way, largely from the deployment of capital not previously in the region, and in an essentially new enterprise. The Panel also specifically finds that the Halliburton Claimants will not be unjustly enriched by the Panel's recommendations for the reasons outlined above, and as the post-liberation income was earned based on large volumes of work and not on unusual profit margins. 26/ The Panel finds that this income was in no way a windfall to the Halliburton claimants.

### C. Compensation paid to others

315. All of the Halliburton Claimants, with the exception of Halliburton Logging, claim that they incurred additional payroll and related expenses as a result of Iraq's unlawful invasion and occupation of Kuwait. More specifically, these Halliburton claimants state that they paid "Scud bonuses" and hardship pay to their employees throughout the region of the conflict, and that they incurred additional airfares, travel expenses for evacuated employees and other costs. These Halliburton claimants state that these payments and hardship expenses were necessary to compensate their employees for the increased hazards of working in a war zone. Each of these claims will be considered in turn.

#### 1. Halliburton Company - compensation paid to others

316. Halliburton Company claims that it paid to its employees US$383,549 in war zone payments and for temporary living arrangements and travel, all as a result of Iraq's unlawful invasion and occupation of Kuwait. This claim is supported by a significant volume of payroll information, and by an external audit of Halliburton Company's extraordinary expenses.

317. In response to a request from the secretariat, Halliburton Company has confirmed that these extraordinary expenses were in fact charged as expenses against the earnings of this claimant. Accordingly, these expenses reduced Halliburton Company's actual monthly profit, and increased Halliburton Company's claim for a decline in operating income. The Panel has recommended that the claimant be compensated for this decline in operating income (see para. 296, supra). Accordingly, the Panel recommends no compensation for Halliburton Company's war zone payments and related costs, as an award for this element of the claim would result in over-compensation to this claimant.

#### 2. Halliburton Geophysical - compensation paid to others

318. Halliburton Geophysical claims that it paid to its employees US$315,613 in war zone payments as a result of Iraq's unlawful invasion and occupation of Kuwait. This claim is supported by a significant volume of payroll information and reconciliation schedules, from which the Panel was able to verify this expenditure. The Panel accordingly finds that the

claimant has proved extraordinary expenses of US$315,613, and that these expenses are compensable as they resulted directly from Iraq's unlawful invasion and occupation of Kuwait. The Panel accordingly recommends an award of US$315,613 to Halliburton Geophysical.

3. Otis Engineering - compensation paid to others

319. Otis Engineering claims that it paid to its employees US$513,260 in war zone payments, and for temporary living arrangements and travel, all as a result of Iraq's unlawful invasion and occupation of Kuwait. The Panel has reviewed a significant volume of supporting payroll information, and an external audit report dealing with these extraordinary expenses, which report concludes that Otis Engineering incurred US$369,463 in extraordinary war zone payments, temporary living and travel expenses. The Panel finds that these extraordinary expenses were caused directly by the Iraqi invasion and occupation of Kuwait, and recommends an award of US$369,463 based on the external audit of this element of the claim.

320. In addition, Otis Engineering states that it paid compensation to its employees in Kuwait for belongings either looted or destroyed by Iraqi forces. Otis Engineering claims US$95,750 for this loss element. In support of its claim Otis Engineering provided copies of the cheques it issued to its employees. The Panel finds that this portion of the claim has been proved and is compensable in full, and accordingly recommends an award of US$95,750.

4. Halliburton Limited - compensation paid to others

321. Halliburton Limited claims that it paid to its employees US$474,771 in war zone payments, and for temporary living arrangements and travel, all as a result of Iraq's unlawful invasion and occupation of Kuwait. This claim is not supported by primary and contemporaneous accounting or payment documentation, which should be available to the claimant. The Panel notes that these payments were generated from outside Kuwait, and the supporting documents were not therefore destroyed or lost as a result of the Iraqi invasion and occupation of Kuwait. Halliburton Limited states that its primary supporting documentation was lost. In any event, the Panel finds that this element of the claim is not adequately supported by contemporaneous documentation. Accordingly, Halliburton Limited's claim for war zone payments must fail on evidentiary grounds, and the Panel recommends no compensation for this loss element.

322. In addition, Halliburton Limited states that it paid compensation to its employees in Kuwait for belongings either looted or destroyed by Iraqi forces. Halliburton Limited claims US$552,020 for this loss element. In support of its claim Halliburton Limited provided to the Commission accounting records with respect to its payments to employees, along with inventories of lost belongings. The Panel finds that Halliburton Limited

has proved that these extraordinary expenses were incurred by it as a result of Iraq's unlawful invasion and occupation of Kuwait. The Panel is satisfied that payment to Halliburton Limited for this claim will not result in over-compensation notwithstanding the fact that the Panel has recommended compensation to Halliburton Limited for an overall decline in operating income (see paras. 303-306, supra). Halliburton Limited has satisfied the Panel that these extraordinary expenses were charged to a special Middle East contingency reserve fund, and are accordingly not reflected in the operating income statements that form the basis of the claim for a decline in operating income. Accordingly the Panel finds this portion of the claim to be compensable in full, and recommends an award of US$552,020.

## D. Contract losses

323. Halliburton Geophysical, Halliburton Logging and Otis Engineering all advance claims for specific contract losses arising from Iraq's unlawful invasion and occupation of Kuwait.

### 1. Halliburton Geophysical contract losses

#### (a) Seismic Agreement - supply of equipment

324. Halliburton Geophysical entered into a contract for the provision of equipment and services (the "Seismic Agreement") with Iraq Oil Exploration Company ("IOEC") in November 1989. Pursuant to the Seismic Agreement, Halliburton Geophysical agreed to supply the vehicles, equipment, accessories, spare parts and software packages necessary for the IOEC to conduct three dimensional seismic surveys for oil exploration purposes. The obligation to supply spare parts was for a period of 2 years after the termination of Halliburton Geophysical's field operations obligations.

325. The Seismic Agreement included a financing arrangement which governed the terms of payment. The financing agreement required IOEC to make a substantial down payment, and to open a letter of credit for the payment of the balance in three equal semi-annual instalments commencing on 20 November 1991 and ending on 20 November 1992. IOEC made the necessary down payment, and Halliburton Geophysical claims an outstanding balance of US$9,916,858. As the letter of credit was issued by the Central Bank of Iraq and was unconfirmed, Halliburton Geophysical claims that this balance was unpaid as a result of Iraq's unlawful invasion and occupation of Kuwait.

326. The Panel's first task is to determine whether the unpaid balance under the Seismic Agreement is within the jurisdiction of the Commission. Because the Seismic Agreement is a contractual obligation created prior to Iraq's unlawful invasion and occupation of Kuwait, the Panel must determine, as a threshold matter, (1) whether the claim is a debt or an

obligation of Iraq and (2) whether it falls within the meaning of the "arising prior to 2 August 1990" limitation imposed by paragraph 16 of Security Council resolution 687 (1991).

327. The Panel finds that the amounts outstanding from IOEC to Halliburton Geophysical are debts of Iraq within the meaning of Security Council resolution 687 (1991).

328. The Panel has carefully examined the Seismic Agreement, the financing agreement, and the letter of credit documentation. The Panel finds that Halliburton Geophysical undertook a single indivisible contractual obligation to provide a defined package of equipment and accessories, and that there was no provision for partial payment based on any partial performance by Halliburton. On the contrary, IOEC's payment obligation (apart from the down payment) arose only on delivery of the complete package of equipment and accessories.

329. The Panel further finds that Halliburton Geophysical shipped the subject equipment and accessories in numerous lots starting in March 1990 and ending on 30 July 1990. The Panel must determine when the debt for these shipments arose, and specifically whether the debt arose prior to 2 August 1990, as discussed in section II.C., supra.

330. As Halliburton Geophysical undertook a single indivisible contractual obligation, with no provision for payment for anything less than delivery of the complete package, the Panel finds that Halliburton Geophysical did not perform its contractual obligations until the last shipment was made. 27/ Accordingly, and as the last shipment was made (by air) on 30 July 1990, the Panel finds that IOEC's debt arose after 2 August 1990 within the meaning of Security Council resolution 687 (1991). As a result, this claim is within the jurisdiction of the Commission.

331. The Panel further finds that IOEC failed to pay the balance due under the Seismic Agreement, in the amount of US$9,916,858, as a direct result of Iraq's unlawful invasion and occupation of Kuwait.

332. As noted by Halliburton Geophysical, the Panel finds that it is appropriate to deduct from this claim the amount of US$103,870 as a credit to IOEC for a shipment of cables that was not delivered. Accordingly, the Panel recommends an award for this loss element in the amount of US$9,812,988.

333. Halliburton Geophysical claims that it suffered other losses related to the Seismic Agreement as a result of Iraq's unlawful invasion and occupation of Kuwait. Specifically, Halliburton Geophysical claims that it pre-paid freight and shipping charges in the amount of US$648,927 as an accommodation to IOEC. The Panel finds that these payments were made by Halliburton Geophysical, and were due to be repaid by IOEC on the same

terms as the amounts due for equipment and services, that is in 3 equal semi-annual instalments commencing on 20 November 1991 and ending on 20 November 1992. As such, and for the same reasons that the Panel has recommended an award for the outstanding balance for equipment and services, the Panel also recommends an award of US$648,927 for these pre-paid freight and shipping costs.

334. In summary, the Panel recommends compensation to Halliburton Geophysical for losses under the Seismic Agreement, with respect to the supply of equipment, in the amount of US$10,461,915.

(b) Seismic Agreement - field training

335. Further, the Seismic Agreement called for Halliburton Geophysical to provide field training in the use of seismic equipment for six months, and Halliburton Geophysical claims losses of US$1,613,333 for this item. The Panel finds that Halliburton Geophysical mobilized its personnel to fulfill this contractual obligation in June 1990, and the Panel further finds that Halliburton Geophysical's personnel continued to work after Iraq's unlawful invasion and occupation of Kuwait under threat from Iraqi forces, and that these employees were prohibited from leaving Iraq until the training was completed.

336. The field training portion of the Seismic Agreement called for six monthly payments of US$201,667, and for six monthly payments of the Iraqi Dinar equivalent of US$201,667. Halliburton Geophysical received no United States dollar payments, and only four payments for the Iraqi dinar equivalent of US$201,667 each. Accordingly, the Panel finds that Halliburton Geophysical is entitled to an award of US$1,209,999, for the United States dollar payments. The Panel notes that at all relevant times the Iraqi dinar was non-transferable and non-exchangeable. 28/ The Panel further notes that Halliburton Geophysical incurred Iraqi dinar expenses in order to satisfy its obligations under the Seismic Agreement. The Panel notes that Halliburton Geophysical has provided no evidence to the Commission that it incurred Iraqi dinar expenses in excess of the Iraqi dinar payments it actually received from ICEC. In the circumstances, and because the Iraqi dinar was non-transferable and non-exchangeable, Halliburton Geophysical has not proved any loss arising from ICEC's failure to make two Iraqi dinar payments under the Seismic Agreement for field training.

337. In summary, the Panel recommends an award of US$1,209,999 to Halliburton Geophysical for the failure of ICEC to make United States dollar payments for field training under the Seismic Agreement.

(c) Seismic Agreement - one-time moving/training fees

338. Further, the Seismic Agreement provided for a one-time moving fee to cover administrative and travel costs, in the amount of US$91,000, which was not paid, and a one-time training fee of US$129,000, which was also not paid. This training fee was for technical training, and was separate from the field training discussed above. Both the moving fee and the training fee were to be paid after the handover of the equipment to IOEC, at the conclusion of the training period. The Panel finds that these fees were not paid as a direct result of Iraq's unlawful invasion and occupation of Kuwait, and that they are compensable. Accordingly, the Panel recommends compensation in the total amount of US$220,000 for these items.

(d) Seismic Agreement - loss of profits

339. Finally, Halliburton Geophysical claims for lost profits based on the anticipated sale of spare parts under the Seismic Agreement for the 2 year contract period. Halliburton claims US$76,727 based on actual performance under a "comparable" contract with another customer in Oman. The Panel notes that there is no past sales history with IOEC which can be used to value a loss of profits claim. The Panel notes as well that Halliburton Geophysical has compared sales for 2.5 years in Oman with a contractual obligation to supply spare parts for 2 years in the case of IOEC. The Panel also notes that the Omani contract was substantially larger than the IOEC project. The Panel finds that Halliburton Geophysical has not proved the volume of spare parts that would have been supplied to IOEC, or the margin of profit that it would have earned on that volume. As such, this loss of profits claim is too speculative to be compensable, and the Panel recommends accordingly that no compensation be awarded for this loss element.

2. Halliburton Logging contract losses

(a) Purchase Agreement - new equipment

340. On 9 January 1990, Halliburton Logging signed a Purchase Agreement with AMLCO pursuant to which it agreed to supply two well logging trucks and spare parts. Some prepaid goods were shipped under this agreement, [illegible] unpaid freight charges of US$25,294. Halliburton Logging claims that the majority of the equipment under this agreement was not shipped as at 2 August 1990, and that this equipment was then largely resold. For the goods that were resold, Halliburton Logging claims its loss of profit on the AMLCO sale, on the theory that but for Iraq's unlawful invasion and occupation of Kuwait it would have had both sales. For the goods that were not resold, Halliburton Logging claims its cost of production plus its loss of profit on the AMLCO sale. In both cases, the loss of profits is calculated based on an estimated profit margin of 47 per cent. On these bases, Halliburton claims a loss of profit under the Purchase Agreement of

US$1,305,215. The Panel notes that this figure is based on a calculation that starts with the original contract price, and provides appropriate credits for various payments received.

341. The Panel has examined the Purchase Agreement with AWLCO, the relevant shipping documents, and Halliburton Logging's management accounts. The Panel finds that Halliburton Logging suffered a loss under the Purchase Agreement as a result of the unlawful invasion and occupation of Kuwait, and that its method for calculating that loss is generally acceptable. The Panel finds support for an overall 47 per cent profit margin in Halliburton Logging's management accounts. However, the evidence does not support the application of that margin to this particular contract loss. With the assistance of its consultants, and from a review of this claimant's accounting records, the Panel has determined that Halliburton Logging's margin on this contract would not have been less than 20 per cent. On that basis, and otherwise using the same method for calculating the loss as used by Halliburton Logging, the Panel has valued this loss at US$353,148. In addition, the Panel agrees that Halliburton Logging should be compensated for the US$25,294 in unpaid freight charges.

342. In summary, the Panel recommends compensation in the amount of US$353,148 for losses suffered by Halliburton Logging under the Purchase Agreement, plus US$25,294 in unpaid freight charges.

(b) Contract - used equipment

343. On 10 November 1989 Halliburton Logging signed a contract for the sale of used logging equipment, plus parts and assistance, with AWLCO. Halliburton Logging claims that the majority of this used equipment was shipped, and that the unshipped equipment was resold. Halliburton Logging claims for its loss of profit on the unshipped equipment, in the amount of US$4,523, again on the theory that but for Iraq's unlawful invasion and occupation of Kuwait it would have had both sales. While AWLCO did make a down payment for the used equipment, and additional payments for extras, Halliburton Logging claims for the unpaid balance owing on equipment shipped prior to the invasion, in the amount of US$508,205.

344. The Panel has examined the contract for the sale of used logging equipment, as amended, and the shipping documents. In addition, the Panel reviewed bank transfers with respect to the payments made by AWLCO. The Panel finds that Halliburton Logging suffered losses under the contract for the sale of used logging equipment as a result of the unlawful invasion and occupation of Kuwait.

345. Specifically, Halliburton Logging lost the profit it would have earned on the unshipped equipment. Halliburton Logging has calculated that loss based on an anticipated margin of 47 per cent. As noted above, the Panel finds support for an overall 47 per cent profit margin in Halliburton

Logging's management accounts. However, the evidence does not support the application of that margin to this particular contract loss. With the assistance of its consultants, and noting that refurbished used equipment often obtains a somewhat higher margin than new equipment in the oil field supply sector, and from a review of this claimant's accounting records, the Panel has determined that Halliburton Logging's margin on this contract would not have been less than 25 per cent. On that basis, the Panel has valued this loss at US$2,405.

346. In addition, the Panel finds that Halliburton Logging suffered a loss of the unpaid balance on the used equipment that it shipped to AWLCO. For this portion of the claim, the Panel's first task is to determine whether the loss is within the jurisdiction of the Commission. Because the shipment of used equipment arose from a contractual obligation created prior to Iraq's unlawful invasion and occupation of Kuwait, the Panel must determine, as a threshold matter, (1) whether the claim is a debt or an obligation of Iraq and (2) whether it falls within the meaning of the "arising prior to 2 August 1990" limitation imposed by paragraph 16 of Security Council resolution 687 (1991).

347. The Panel finds that the unpaid balance for the used equipment is a debt of Iraq within the meaning of Security Council resolution 687 (1991).

348. The Panel further finds that Halliburton Logging shipped the used equipment in multiple instalments both before and after 2 May 1990. The Panel must determine when the debt for these shipments arose, and specifically whether the debt arose prior to 2 August 1990, as discussed in section II.C., supra.

349. The Panel finds that Halliburton Logging undertook a single indivisible contractual obligation to provide a defined package of equipment and accessories, and that there was no provision for partial payment of the balance based on any partial performance by Halliburton Logging. On the contrary, AWLCO's final payment obligation arose only on delivery of the complete package of used equipment.

350. As Halliburton Logging undertook a single indivisible contractual obligation, with no provision for payment of the final amount for anything less than the complete package, the Panel finds that Halliburton Logging could not have performed its contractual obligation until the last shipment was made. 23/ Accordingly, and as Halliburton Logging made shipments after 2 May 1990, and as the completion of the contract by Halliburton Logging was rendered impossible by Iraq's unlawful invasion and occupation of Kuwait, the Panel finds that AWLCO's debt arose after 2 August 1990 within the meaning of Security Council resolution 687 (1991). As a result, this claim is within the jurisdiction of the Commission.

351. The Panel further finds that AWLCO failed to pay the balance due, in the amount of US$508,205.00, as a direct result of Iraq's unlawful invasion and occupation of Kuwait.

352. As a result, the Panel recommends compensation to Halliburton Logging for loss of profit on unshipped used equipment in the amount of US$2,405. The Panel further recommends compensation to Halliburton Logging for the unpaid balance on used equipment shipped to AWLCO in the amount of US$508,205.

(c) Technical support contract

353. On 19 September 1982, Halliburton Logging signed a technical support contract with AWLCO, with a term of 10 years. Under this contract Halliburton Logging provided a technical adviser in Iraq. Halliburton Logging claims that this technical adviser left Iraq as a result of its unlawful invasion and occupation of Kuwait, with 25 months left under the technical support agreement. Halliburton Logging claims its loss of profits under this agreement in the amount of US$101,625.

354. The Panel has reviewed the technical support contract, and the Panel requested and reviewed details of the costs of Halliburton Logging for supplying this technical adviser. The Panel is satisfied that Halliburton Logging lost US$3,565 per month in net profit, for the remaining 25 months of the contract, because of Iraq's unlawful invasion and occupation of Kuwait. Accordingly, the Panel recommends compensation of US$89,125. This figure differs from the claim amount by US$500 per month for the balance of the contract, as the evidence shows that Halliburton Logging's monthly charge-out rate to AWLCO was overstated in the claim by that amount. The discrepancy relates to a monthly payment of Iraqi dinar agreed by the parties, which was intended purely to cover local expenses. As these local expenses were not incurred, the Panel has disregarded the Iraqi dinar amounts in assessing the loss of profits claim.

(d) Spare parts - accounts receivable

355. Halliburton Logging also claims losses arising from its obligation to supply spare parts to AWLCO under the agreements described above, and pursuant to a 1982 agreement under which Halliburton Logging was committed to supply spare parts and related materials needed to maintain and update the customer's logging equipment for 10 years.

356. In practice, spare parts were supplied by Halliburton Logging to AWLCO on a service ticket basis as required by the customer. This contrasts with Halliburton Logging's sale of used equipment (see paras. 343-352, *supra*): in the case of spare parts, Halliburton Logging undertook numerous contractual obligations with numerous payment dates. In the case of the used equipment, Halliburton Logging undertook a single indivisible

contractual obligation with the expectation of receiving final payment on completion of its performance obligation.

357. Halliburton Logging claims unpaid accounts receivable for spare parts in the amount of US$219,146.

358. The Panel's first task is to determine whether the unpaid accounts receivable are within the jurisdiction of the Commission. Because these accounts receivable arose from a contractual obligation created prior to Iraq's unlawful invasion and occupation of Kuwait, the Panel must determine, as a threshold matter, (1) whether the claim is a debt or an obligation of Iraq and (2) whether it falls within the meaning of the "arising prior to 2 August 1990" limitation imposed by paragraph 16 of Security Council resolution 687 (1991).

359. The Panel finds that the accounts receivable for spare parts which were unpaid by AWLCO are a debt of Iraq within the meaning of Security Council resolution 687 (1991).

360. Next, the Panel must determine when this debt arose, and specifically whether the debt arose prior to 2 August 1990, as discussed in section II.C., supra.

361. The Panel finds that Halliburton Logging made 11 shipments of spare parts to AWLCO after 2 May 1990. The Panel finds that these 11 shipments, worth US$106,079, represent performance by Halliburton Logging creating a debt or obligation of Iraq that arose after 2 August 1990 within the meaning of paragraph 16 of Security Council resolution 687 (1991). As a result, the claim based on these 11 shipments, for a total amount of US$106,079, is within the jurisdiction of the Commission. In coming to this decision, the Panel has disregarded three supporting invoices, for a total amount of US$25,803, which are not for spare parts and therefore do not relate to this loss element.

362. The Panel further finds that AWLCO failed to pay for these 11 shipments, in the total amount of US$106,079, as a direct result of Iraq's unlawful invasion and occupation of Kuwait.

363. The Panel finds that the balance claimed by Halliburton Logging for spare parts shipped to AWLCO, in the amount of US$87,264, relates to multiple shipments made prior to 2 May 1990. The Panel finds that these shipments, worth US$87,264, represent performance by Halliburton Logging creating a debt or obligation of Iraq that arose prior to 2 August 1990 within the meaning of paragraph 16 of Security Council resolution 687 (1991). As a result, the claim based on these shipments is outside the jurisdiction of the Commission.

364. As a result, the Panel recommends compensation to Halliburton Logging for accounts receivable for spare parts in the amount of US$106,079. The remainder of Halliburton Logging's claim for accounts receivable for spare parts is outside the jurisdiction of the Commission.

(e) Spare parts - outstanding orders

365. Halliburton Logging also claims that it had manufactured but not yet shipped certain spare parts that could not be resold, and so Halliburton Logging seeks the full purchase price of these parts in the amount of US$17,896. For spare parts that were ordered but not shipped, and which were subsequently resold, Halliburton Logging claims its loss of profit on the AWLCO orders in the amount of US$408,532 again on the basis that but for Iraq's unlawful invasion and occupation of Kuwait it would have had both sales.

366. The Panel has reviewed the underlying purchase orders and quotations with respect to these spare parts. The Panel is satisfied from these primary documents that Halliburton Logging had orders and quotations totalling US$945,550 outstanding at the time, including the orders that Halliburton Logging claims it was unable to resell. From this amount the Panel has subtracted quotations with a value of US$73,203, as these were quotations that had not advanced to the purchase order state. The Panel has further excluded US$60,655 in "stale" orders, where the Panel is not satisfied that the orders were still active because of the length of time that had elapsed. This leaves a total volume of current orders, where the spare parts were manufactured but not shipped, of US$811,692. Halliburton Logging seeks compensation based on a profit margin of 47 per cent. The Panel has noted above that this margin is supported by Halliburton Logging's financial records, and on the advice of its expert consultants, the Panel is satisfied that this was the margin that would have been earned on spare parts sales to AWLCO at the relevant time. As such, the Panel values this loss element at US$381,495. In making this finding, the Panel accepts that Halliburton Logging would have had both the sales to AWLCO and the subsequent resales, were it not for Iraq's unlawful invasion and occupation of Kuwait. The Panel is not prepared to recommend an award in excess of this profit margin for the orders that Halliburton Logging claims it was unable to resell, as Halliburton Logging has not proved that it was unable to resell the subject orders.

(f) Spare parts - loss of profits

367. Finally, Halliburton Logging claims US$1,400,000 for loss of profits on the basis that Iraq's unlawful invasion and occupation of Kuwait prevented it from continuing with its service ticket supply of spare parts to AWLCO. In support of this loss element, Halliburton Logging has provided to the Commission an affidavit with respect to anticipated sales volumes and profit margins. The Panel finds that this loss element of the

claim is not proved. Specifically, Halliburton Logging has not provided evidence sufficient to establish the anticipated volume of sales or the anticipated future profit margin.

368. Accordingly, the Panel recommends no compensation for Halliburton Logging's claim for loss of profits on its anticipated spare parts sale.

3. Otis Engineering contract losses

369. Prior to 2 August 1990, Otis Engineering sold specialized equipment in Kuwait through the Gas and Oil Field Service Company ("GOFSCO"), its agent in Kuwait. Otis Engineering also sold directly to the Iraqi National Oil Company ("INOC") on a service ticket basis. Otis Engineering claims that it lost profits on sales to GOFSCO and to INOC as a result of Iraq's unlawful invasion and occupation of Kuwait.

370. More specifically, Otis Engineering claims the full sales price for undelivered equipment ordered by GOFSCO and INOC, and specially manufactured for those customers, in the amount of US$579,271. Otis Engineering claims that it was unable to resell this equipment, and so the full sale price is the proper measure of the loss. In support of this claim Otis Engineering has provided to the Commission the underlying purchase orders, as well as an affidavit from a responsible employee attesting to the specially manufactured nature of these goods.

371. The Panel specifically requested that Otis Engineering provide documentary evidence that this equipment was manufactured, and documentation demonstrating all of the claimant's efforts to mitigate its losses by reselling. Otis Engineering has not provided documentary evidence responsive to these requests, and accordingly the Panel finds that this element of the claim must fail on evidentiary grounds.

372. In addition, Otis Engineering claims lost profits on an order placed by INOC for special equipment that had not yet been manufactured in the amount of US$621,847. This order was subject to a letter of credit being placed by INOC for the purchase price. Otis Engineering has provided the Commission with the quotation and purchase order, and with an affidavit from a responsible employee outlining the costs and expected profits associated with this order.

373. The Panel has reviewed the documents supporting this loss element and has noted that the underlying quotation was in May 1989, and was confirmed by telex in March 1990. However, the required letter of credit does not appear to ever have been posted by INOC. The Panel is not satisfied that the cancellation of this order was a direct result of Iraq's unlawful invasion and occupation of Kuwait; rather it appears that this order did not proceed because of the customer's failure to provide a letter of credit

in the months following March 1990. Accordingly the Panel recommends no compensation for this loss element.

374. Otis Engineering claims also for contract losses with respect to two Kuwaiti orders for equipment that were affected by Iraq's unlawful invasion and occupation of Kuwait. Specifically, GOFSCO had placed an order for equipment with a value of US$423,526. This order was delayed, and was not completed until 23 March 1992. Otis Engineering claims US$36,705 for the delay in completion of this order.

375. The Panel notes that the claim with respect to this delayed order is essentially an interest claim, which has been calculated by reference to prevailing interest rates. The Panel notes that Otis Engineering has not provided any evidence that it incurred additional financing costs as a result of the delay in receipt of these profits, or that the proposed rate of interest corresponds to this claimant's actual financing costs. As such, this element of the claim must fail on evidentiary grounds. The Panel makes no findings on whether Otis' interest claim would have been compensable if it had been adequately proven.

376. Finally, Otis Engineering states that it had won a bid to supply subsurface safety equipment to the Kuwaiti Ministry of Oil, which order was cancelled as a result of Iraq's unlawful invasion and occupation of Kuwait. Otis Engineering claims loss of profits on this lost contract in the amount of US$773,599. In support of this claim the claimant has provided the tender documents relevant to Otis Engineering's bid, an affidavit from a responsible employee of the claimant stating that this bid was accepted, and an internal profit calculation sheet. The Panel finds based on the evidence presented that this bid had not proceeded to the point where a firm contractual commitment was in place. Accordingly, this element of the claim cannot succeed as the loss claimed is speculative.

377. In summary, the Panel recommends no compensation for Otis Engineering's contract loss claims.

## E. Loss of tangible property

378. Halliburton Limited and Otis Engineering both maintained offices and operations centres in Kuwait prior to 2 August 1990, and they both claim for loss of tangible property which they say was destroyed or looted by Iraqi forces.

### 1. Halliburton Limited loss of tangible property

379. More specifically, Halliburton Limited claims US$7,549,987 for the loss of "almost all" its depreciable assets in Kuwait, such as trucks, pumps and miscellaneous equipment destroyed or looted as a result of Iraq's unlawful invasion and occupation of Kuwait. Halliburton Limited quantified

this claim by reference to its actual replacement cost, as Halliburton Limited brought new equipment into Kuwait after the occupation of that country ended. Accordingly, Halliburton Limited claims that this figure, which is the net book value of the replacement assets, represents the depreciated replacement value of its lost depreciable assets. In support of this claim Halliburton Limited initially provided copies of its post liberation fixed asset register showing replacement assets only.

380. In response to a question from the secretariat, Halliburton Limited provided a fixed asset register for 31 July 1990, showing both the original cost and the accumulated depreciation for the lost depreciable assets. With the assistance of its consultants, the Panel has taken the net book value of the assets as at 31 July 1990, and to this figure added a minimum amount of 10 per cent of the original purchase cost for fully depreciated assets. This leads to an asset value of US$545,487. As Halliburton Limited lost "almost all" of its depreciable assets as a result of Iraq's unlawful invasion and occupation of Kuwait, the Panel finds that 90 per cent of this asset value so calculated represents Halliburton Limited's lost depreciable assets. Accordingly, the Panel values this loss at US$490,938.

381. In addition, Halliburton Limited claims US$498,275 for an inventory of sales materials, spare parts and similar items. Halliburton Limited argues that this inventory should be valued at its cost, without deduction for depreciation, as these items were all held for resale. In support of this claim Halliburton Limited has provided to the Commission detailed accounting records showing its inventory as at 31 August 1990. The Panel finds that Halliburton Limited has proved its cost for inventory items, and that these inventory items were lost as a result of Iraq's unlawful invasion and occupation of Kuwait. As these items were held for resale, the Panel finds that Halliburton Limited's loss is equal to its cost for these items, in the amount of US$498,275.

382. Halliburton Limited also claims that certain items, which were expensed at purchase and therefore not depreciated, were looted or destroyed by Iraqi forces. As these items were expensed, they were not maintained on Halliburton Limited's asset register. Halliburton Limited claims US$789,279 for these items based on Halliburton Limited's estimate of their "approximate net worth" at the time of the Iraqi invasion. In support of this claim Halliburton Limited has provided a subsequently prepared list of these items with their approximate values. Halliburton Limited has not provided any contemporaneous documentation reflecting the value of these expensed items, or from which Halliburton Limited's claim can be verified. Accordingly, this element of the claim must fail on evidentiary grounds.

383. Finally, Halliburton Limited claims that it incurred US$50,211 in expenses in reconditioning eight pieces of equipment that were damaged, but not destroyed, by Iraqi forces. This claim is supported by a subsequently

prepared chart of labour and parts associated with returning these units to service. Halliburton Limited has not provided any contemporaneous documentation reflecting its costs or expenses associated with reconditioning this equipment, or from which these costs or expenses can be verified. Accordingly, this element of the claim must fail on evidentiary grounds.

2. Otis Engineering loss of tangible property

384. Otis Engineering maintained a presence in Kuwait to enable Halliburton Limited to meet its obligations to KOC. Otis Engineering claims that its depreciable assets in Kuwait were destroyed as a result of Iraq's unlawful invasion and occupation of Kuwait. Otis Engineering claims US$89,333 for this loss, which was calculated by reference to its actual replacement cost just as Halliburton Limited valued its loss of depreciable assets. In support of this claim Otis Engineering provided a post-liberation fixed asset register showing replacement assets only.

385. The secretariat requested and received from Otis Engineering a fixed asset ledger as of 31 July 1990, showing the original cost and depreciated value of these assets. With the assistance of its consultants, the Panel has taken the net book value of the assets as at 31 July 1990, and to this figure added a minimum value of 10 per cent of the original purchase cost for those assets depreciated to less than that value. This leads to an asset value of US$83,798, and the Panel recommends compensation for this loss in that amount.

386. In addition, Otis Engineering claims US$112,784 for a lost inventory of sales materials, spare parts and similar items. As with the Halliburton Limited claim, Otis Engineering has valued this claim based on its cost, as all of these items were held for resale. In support of this claim Otis Engineering has provided a list showing the lost inventory, bearing the date "1990" without further detail. Otis Engineering was unable to provide further information to the Panel, such as acquisition and disposal information, the precise date of the document supporting this claim, or details of the nature of this inventory. Accordingly, Otis has failed to prove this element of the claim.

387. Finally, Otis Engineering claims US$165,507 for certain lost items that were expensed at the time of purchase and therefore not depreciated. Otis Engineering's claim is based on the approximate fair market value of these items, supported by a subsequently prepared list of the items with their approximate values. Otis Engineering has not provided any contemporaneous documentation reflecting the value of these expensed items, or from which Otis Engineering's claim can be verified. Accordingly, this element of the claim must fail on evidentiary grounds.

F. Bank accounts, securities and other intangibles

1. Otis Engineering - intangibles

388. Otis Engineering maintained a bank account in Kuwait as at 2 August 1990, and it claims for the loss of use of its deposits. The total claim is for US$2,511 based on prevailing interest rates during the relevant period. In support of this element of the claim, Otis Engineering provided a copy of its general ledger showing the bank balance. Otis Engineering has not provided any evidence that the account in question was an interest bearing account, or that Otis Engineering incurred additional financing costs as a result of the inaccessibility of these funds, or that the proposed rate of interest corresponds to this claimant's actual financing costs. As such, this element of the claim must fail on evidentiary grounds. The Panel makes no findings on whether this interest claim would have been compensable if it had been adequately proven.

389. Otis Engineering also advances a claim for prepaid deposits in Kuwait, and states that these deposits were posted in respect of office and apartment space. Otis Engineering has provided a general ledger showing a summary account in support of this claim, which totals US$12,429. The Panel finds that the evidence provided in support of this loss element is insufficient to establish the fact and the amount of any loss. Accordingly, this loss element of the claim must fail on evidentiary grounds.

390. Otis Engineering also made advances to its employees in the Middle East, and incurred expenses on their behalf. Otis Engineering states that its primary records with respect to the advances were destroyed in Kuwait as a result of Iraq's unlawful invasion and occupation of Kuwait, and that it has been precluded from recovering the advances from its employees because these records were destroyed. Otis Engineering states that the expenses incurred on behalf of employees were for services that were not actually received by Otis Engineering or the employees because of the invasion. Otis Engineering claims US$6,000 for advances to employees, supported by general ledger extracts confirming this amount. Otis Engineering also claims US$9,460 for expenses incurred on behalf of employees, again supported by a general ledger extract. The Panel finds that the evidence provided by Otis Engineering in support of this loss element establishes the fact and the amount of the advances and expenses. The Panel finds that Otis Engineering was unable to recover these amounts from its employees because the available records do not identify them, and because the expenses were advanced for services not actually provided due to the invasion. As a result, the Panel finds this loss element to be compensable in the amount of US$15,460.

391. Finally, Otis Engineering claims US$315,709 for outstanding accounts receivable for goods that were shipped to Kuwait and offloaded, but never received by Otis Engineering's agent. In support, Otis Engineering provided a copy of its agency agreement, its general terms and conditions of sale, the relevant accounts receivable reports with attached invoices, and shipping documentation. Based on a review of this documentation, the Panel has determined that one shipment with a value of US$23,714 was offloaded in Dubai, rather than in Kuwait. Otis Engineering has not satisfied the Panel that it received no value for this shipment, or that Otis Engineering took all reasonable steps to mitigate its losses with respect to that one shipment. The Panel is satisfied that the balance of the shipments were offloaded in Kuwait and destroyed or looted by Iraqi forces. The Panel accordingly finds that the remaining balance of the outstanding accounts receivable has been proved, in the amount of US$291,995, and that this loss resulted from Iraq's unlawful invasion and occupation of Kuwait.

392. In summary, the Panel recommends that compensation in the amount of US$15,460 be awarded for advances to employees and expenses incurred on their behalf, and US$291,995 for accounts receivable for goods destroyed or looted in Kuwait.

### 2. Halliburton Limited - intangibles

393. Halliburton Limited maintained a bank account in Kuwait as at 2 August 1990. In Halliburton Limited's case, funds were actually held up in transit from Citibank to Kuwait, as a result of Iraq's unlawful invasion and occupation of Kuwait. Halliburton Limited claims it was deprived of the use of these funds in transit until Kuwait was liberated, at which point it suffered a currency exchange loss as compared to pre-invasion exchange rates. Accordingly, Halliburton Limited claims US$25,334 for the loss of use of its funds based on average LIBOR rates, and US$12,277 in currency exchange losses. In support of this element of the claim, Halliburton Limited provided fund transfer documents.

394. Halliburton Limited has provided no evidence that it incurred additional financing costs, or a loss of investment opportunity, or that the proposed rate of interest corresponds to this claimant's actual financing costs. As such, this element of the claim must fail on evidentiary grounds. The Panel makes no findings on whether the interest portion of this claim would have been compensable if it had been adequately proven.

395. The Panel finds that the amount claimed by Halliburton Limited for currency losses is not compensable as the loss is too remote and speculative to be considered a direct result of the unlawful invasion and occupation of Kuwait. Accordingly, the Panel recommends no compensation with respect to this loss element.

396. Halliburton Limited also maintains a bank account in Iraq, and claims that it has lost the use of the funds in that account which it states are worth the equivalent of US$36,666. Halliburton Limited states that its only copies of the relevant bank records were in Iraq and Kuwait and have been lost. In support of this claim Halliburton Limited has provided an internal Halliburton Limited document referring to the United States currency equivalent of the amount on deposit.

397. Halliburton Limited has provided no evidence that the funds held on deposit in Iraq have been "expropriated, removed, stolen or destroyed" 30/; furthermore the Panel notes that these Iraqi dinar funds have at all relevant times been non-transferable and non-exchangeable. 31/ As such, the Panel finds that Halliburton Limited has suffered no compensable loss with respect to funds held on deposit in Iraq.

398. Halliburton Limited also advances a claim for prepaid deposits in Kuwait and Iraq, and states that these deposits were posted in respect of office and apartment space in those countries. Halliburton Limited has provided extracts of internal accounting documentation in support of this claim, which totals US$36,763. The Panel finds that the evidence provided in support of this loss element is insufficient to establish the fact and the amount of any loss. Accordingly, this loss element of the claim must fail on evidentiary grounds.

399. Halliburton Limited also made advances to its employees in the Middle East. Halliburton Limited states that its primary records with respect to these amounts were destroyed in Kuwait as a result of Iraq's unlawful invasion and occupation of Kuwait, and that it has therefore been precluded from recovering these advances from its employees. Halliburton Limited claims US$22,328 for advances made to employees, supported by financial records identifying the employees and the amounts. The Panel finds that the evidence provided by Halliburton Limited in support of this loss element establishes the fact and the amount of the advances, and the employees who received the advances, with a great deal of particularity. In the circumstances the Panel is unable to identify any loss suffered by Halliburton Limited with respect to these advances, as a result of the invasion or otherwise, and these advances appear to be recoverable from the relevant employees.

400. Halliburton Limited also advances a claim for US$4,764.00 for an outstanding account to Al-Jahlani Trading, a Kuwait company that Halliburton Limited claims failed as a result of Iraq's unlawful invasion and occupation of Kuwait. In support, Halliburton Limited provides copies of the invoices, and an accounts receivable report. However, Halliburton Limited has not provided any evidence that Al-Jahlani Trading failed, or that it failed as a result of the invasion. Accordingly, the Panel finds that this element of the claim cannot succeed for lack of evidence.

## G. Recommended award

401. The recommendations of the Panel with respect to the Halliburton Claimants can be summarized as follows:

Table 14. Halliburton recommended compensation

| Claimant | Claim item | Claim (US$) | Recommendation (US$) |
|---|---|---|---|
| Halliburton Company | Decline in operating income | 1,071,000 | 1,051,000 |
| | Compensation paid to others | 383,549 | 0 |
| | Sub-total | 1,454,549 | 1,051,000 |
| Halliburton Geophysical | Compensation paid to others | 315,613 | 315,613 |
| | Contract Losses | 12,371,975 | 11,891,914 |
| | Sub-total | 12,687,588 | 12,207,527 |
| Halliburton Logging | Contract Losses | 3,990,436 | 1,465,751 |
| | Sub-total | 3,990,436 | 1,465,751 |
| Otis Engineering | Decline in operating income | 2,375,000 | 0 |
| | Compensation paid to others | 609,010 | 465,213 |
| | Contract Losses | 2,011,422 | 0 |
| | Loss of tangible property | 367,624 | 83,798 |
| | Bank accounts, securities and other intangibles | 346,109 | 307,455 |
| | Sub-total | 5,709,165 | 856,466 |
| Halliburton Limited | Decline in operating income | 1,708,000 | 965,286 |
| | Compensation paid to others | 1,026,791 | 552,020 |
| | Loss of tangible property | 8,887,752 | 989,213 |
| | Bank accounts, securities and other intangibles | 138,132 | 0 |
| | Sub-total | 11,760,675 | 2,506,519 |
| | Total | 35,602,413 | 18,087,263 |

# IX. CLAIM OF WOOD GROUP ENGINEERING LIMITED

402. Wood Group Engineering Limited ("Wood Group") is a private limited company organized under the laws of the United Kingdom. On 10 January 1987 Wood Group and a Kuwaiti partner entered into a contract (the "Maintenance Contract") to provide maintenance services in Kuwait to KOC; the term of the Maintenance Contract ran from 1 April 1987 to 31 March 1991.

403. Wood Group seeks compensation in the amount of £ stg. 185,740 and KD 244,853, net of claim preparation costs, for losses suffered as a result of Iraq's unlawful invasion and occupation of Kuwait. Wood Group's claim is summarized as follows:

Table 15. Wood Group net claims

| Loss element | Claim (£ stg.) | Claim (KD) |
|---|---|---|
| Loss of profit | | 78,475 |
| Mobilization costs | | 86,688 |
| Employee loans | | 3,705 |
| Interest | | 19,945 |
| Tangible assets | | 56,040 |
| Payments to relatives of employees | 4,683 | |
| Contract payments to employees | 147,722 | |
| Humanitarian expenses | 14,668 | |
| Management time | 12,000 | |
| Mitigation expenses | 6,667 | |
| Total 32/ | 185,740 | 244,853 |

A. Loss of profit

404. Wood Group claims that, as a result of Iraq's unlawful invasion and occupation of Kuwait, it was not able to perform and receive revenues under the Maintenance Contract between 2 August 1990, the date of Iraq's invasion of Kuwait, and 31 March 1991, the expiration date of the contract.

405. Wood Group seeks compensation in the amount of KD 78,475 for the resulting loss of profits. Wood Group states that this amount is based on profits it earned under the Maintenance Contract during the three-month period that ended on 30 June 1990. Specifically, such profits were divided by 3 to derive monthly profit. Monthly profit was then multiplied by 8 months, the remainder of the term of the Maintenance Contract, to calculate Wood Group's claimed loss of profits.

406. In support of this claim element, Wood Group has provided income statement accounts with respect to its performance under the Maintenance Contract for the three-month period that ended on 30 June 1990 and a copy of the Maintenance Contract.

407. The Panel finds that Wood Group could not have performed and received revenues under the Maintenance Contract during Iraq's occupation of Kuwait. In calculating Wood Group's loss of profits, the Panel has referred to decision 9, which sets forth certain methods for the valuation of losses relating to income-producing property.

408. The Panel believes, based on its review of the evidence provided and on the opinion of its consultants, that there were no seasonal or periodical variations in revenues and costs under the Maintenance Contract. The Panel therefore finds that it is appropriate to employ profits earned by Wood Group during the three-month period that ended on 30 June 1990 as the basis for the calculation of profits that Wood Group would have earned between 2 August 1990 and 31 March 1991 if Iraq had not invaded Kuwait.

409. Accordingly, the Panel recommends that compensation in the United States dollar equivalent amount of KD 78,475 be awarded with respect to this loss element.

B. Mobilization costs

410. Wood Group advances a claim for a portion of certain initial manpower and equipment expenses that it incurred prior to the beginning of the Maintenance Contract; this portion, it states, would have been recovered by Wood Group if payments under the Maintenance Contract had proceeded normally between August 1990 and March 1991. Wood Group seeks compensation in the amount of KD 86,688 for such unrecovered costs.

411. In support of this loss element, Wood Group has provided to the Commission a copy of the Maintenance Contract and financial statements with respect to the Maintenance Contract for the three-month period ending 30 June 1990.

412. The balance sheet provided by Wood Group contains an entry, denominated "sundry debtors and prepayments", in the claimed amount. Wood Group has not, however, provided to the Commission a detailed description of the claimed mobilization costs and documentary evidence that these were incurred. The Panel finds that the "sundry debtors and prepayments" balance sheet entry is not sufficient evidence of the claimed loss because Wood Group has not broken it down into its component expenses and provided evidence of their occurrence. The Panel also finds that the mobilization requirements set forth in the Maintenance Contract have insufficient evidentiary value because they have not been reconciled with the claimed costs.

413. The Panel accordingly finds that Wood Group's claim with respect to mobilization costs must fail on evidentiary grounds and recommends that no compensation be awarded with respect to this loss element.

C. Employee loans

414. Wood Group states that it had provided loans to certain employees recruited to work under the Maintenance Contract. Such loans were being repaid through monthly wage deductions. Wood Group claims that repayment of the loans ceased when the wages of the relevant employees stopped being paid as a result of Iraq's unlawful invasion and occupation of Kuwait. Wood Group seeks compensation in the amount of KD 3,705 for the resulting losses.

415. In support of this loss element, Wood Group has provided to the Commission no evidence in addition to the balance sheet with respect to the Maintenance Contract for the three-month period ended 30 June 1990. Such balance sheet contains an item denominated "staff loan account" in the claimed amount. In a question posed in December of 1998, the Panel asked Wood Group for additional evidence that the loans were made. Wood Group replied that it was unable to provide any further evidence.

416. The Panel finds that the balance sheet entry alone is not sufficient to provide Wood Group's loss.

417. The Panel therefore finds that Wood Group's claim with respect to employee loans must fail on evidentiary grounds and accordingly recommends that no compensation be awarded.

D. Interest

418. Wood Group states that on 20 August 1991 KOC belatedly paid it KD 242,575 for work carried out under the Maintenance Contract prior to Iraq's invasion and occupation of Kuwait. Because such amount was due to be paid on 1 September 1990, Wood Group claims that it was compelled to incur interest charges of KD 19,945 through use of a bank overdraft facility and seeks compensation in that amount.

419. In support of this loss element, Wood Group has provided to the Commission a copy of a bank statement with respect to a Wood Group account showing the receipt of a payment in the amount of KD 242,575 on 20 August 1991.

420. The Panel finds that Wood Group has not proved that the amount on which interest charges were calculated was due to be paid to it on 1 September 1990 and that it has not provided evidence that it incurred the claimed overdraft charges.

421. Accordingly, the Panel finds that Wood Group's claim with respect to interest charges must fail on evidentiary grounds and recommends that no compensation be awarded. The Panel makes no findings on whether Wood Group's claimed interest loss would have been compensable if it had been adequately proved.

E. Tangible assets

422. Under the Maintenance Contract, Wood Group was required to provide to KOC a fully equipped mechanical workshop, a diagnostic vibration laboratory and other tools and equipment. Wood Group alleges that these items were destroyed or looted during Iraq's occupation of Kuwait and therefore seeks compensation in the amount of KD 56,040, their book value on 30 June 1990.

423. In support of this loss element, Wood Group has provided a copy of Appendix E of the Maintenance Contract, which lists required tangible assets. In addition, Wood Group has provided the balance sheet with respect to the maintenance contract for the three-month period ended 30 June 1990, which contains an entry, denominated "fixed assets", which adds up to the claimed amounts. The Panel has also viewed a 1991 balance sheet of Wood Group that reports a write off of such assets.

424. Wood Group has not, however, provided a description of the circumstances of the loss or evidence of looting or destruction of the assets. The Panel therefore finds that Wood Group's claim with respect to tangible assets must fail on evidentiary grounds and recommends that no compensation be awarded.

F. Payments to relatives of employees

425. Wood Group seeks compensation in the amount of £ stg. 4,683 for payments made to relatives of employees held hostage in Iraq.

426. Wood Group has not, however, provided documentation in support of this loss element.

427. The Panel therefore finds that Wood Group's claim with respect to payments made to relatives of employees must fail on evidentiary grounds and recommends that no compensation be awarded.

G. Contract payments to employees

428. Wood Group claims that, as a result of Iraq's unlawful invasion and occupation of Kuwait, it had to make termination payments to a number of employees who had been hired to work under the Maintenance Contract pursuant to fixed-term contracts; such payments were equal to their full wage entitlements from the date of Iraq's invasion of Kuwait to the end of the term of the Maintenance Contract. Wood Group seeks compensation in the amount of £ stg. 147,722 for the resulting losses.

429. In support of this loss element, Wood Group has provided to the Commission copies of letters accompanying payments made to such employees and receipts from such employees.

430. Although Wood Group has not provided copies of employment contracts with the relevant employees, the Panel believes that, because a prudent contractor would seek to make arrangements with employees with a term equal to that of the project they were hired to work on, such arrangements were in place in this instance as well. The Panel therefore finds that Wood Group's claim that it was contractually obligated to make the termination payments to employees whose contracts had not expired at the time of Iraq's invasion of Kuwait is credible.

431. In addition, the Panel finds that Wood Group has provided sufficient evidence with respect to payment of the claimed amount to employees.

432. Accordingly, the Panel recommends that compensation in the United States dollar equivalent amount of £ stg. 147,722 be awarded with respect to this loss element.

## H. Humanitarian expenses

433. Wood Group seeks compensation in the amount of £ stg. 14,668 for a payment made to its employees in Kuwait shortly after Iraq's invasion of that country to enable them to buy food, certain travel expenses incurred by Wood Group management to visit and provide assistance to relatives of employees taken hostage by Iraqi forces and payments made to the Government of the United Kingdom for the evacuation expenses of Wood Group employees in Kuwait.

434. In support of this loss element, Wood Group has provided to the Commission copies of several claim forms and invoices with respect to travel expenses, a letter from the Foreign and Commonwealth Office of the United Kingdom confirming receipt from the Wood Group of a payment with respect to the evacuation of British nationals from Iraq and Kuwait and a copy of a letter from Wood Group to an employee accompanying reimbursement for payments made to other Wood Group employees in Kuwait for food.

435. The Panel finds that proven humanitarian expenses described by Wood Group were incurred as a direct result of Iraq's unlawful invasion and occupation of Kuwait. The Panel finds that Wood Group has provided sufficient documentary evidence with respect to only £ stg. 9,015 of the claimed expenses and accordingly recommends that compensation be awarded in the United States dollar equivalent of that amount.

## I. Management time

436. Wood Group seeks compensation in the amount of £ stg. 12,000 for time spent by senior executives on the matters described under "Humanitarian expenses" above.

437. Wood Group has not claimed that it incurred extraordinary expenses to compensate employees for additional work caused by Iraq's unlawful invasion and occupation of Kuwait.

438. The Panel therefore finds that any additional work performed by Wood Group employees does not constitute a compensable loss as it did not cause Wood Group to bear a corresponding additional expense. Accordingly, the Panel recommends that no compensation be awarded with respect to this loss element.

## J. Mitigation expenses

439. Wood Group seeks compensation in the amount of £ stg. 6,667 for legal fees incurred after the invasion of Kuwait for advice with respect to its position with respect to amounts owed to it by KOC under the Maintenance Contract and employees hired to perform work covered by the Maintenance Contract. The claimed legal fees do not relate to Wood Group's claim before the Commission.

440. Wood Group has submitted copies of several lawyers' fee statements in support of this loss element.

441. The Panel notes that the evidence provided confirms that Wood Group incurred legal expenses to seek the information stated in paragraph 439, supra. The Panel finds that it was reasonable for Wood Group to seek such information in order to mitigate losses suffered as a direct result of Iraq's unlawful invasion and occupation of Kuwait and believes that proven expenses incurred for that purpose should be compensable. However, the Panel notes that the law firm statements provided by Wood Group only evidence total mitigation expenses of £ stg. 6,248. Accordingly, the Panel recommends that compensation be awarded in the United States dollar equivalent of that amount.

## K. Recommended award

442. In summary, the recommendations of the Panel are as follows:

Table 16. Wood Group recommended compensation

| Loss element | | Claim | Recommendation (Original currency) | Recommendation (US$) |
|---|---|---|---|---|
| Loss of profit | (KD) | 78,475 | 78,475 | 271,540 |
| Mobilization costs | (KD) | 86,688 | 0 | 0 |
| Employee loans | (KD) | 3,705 | 0 | 0 |
| Interest | (KD) | 19,945 | 0 | 0 |
| Tangible assets | (KD) | 56,040 | 0 | 0 |
| Payments to relatives of employees | (£ stg.) | 4,683 | 0 | 0 |
| Contract payments to employees | (£ stg.) | 147,722 | 147,722 | 289,651 |
| Humanitarian expenses | (£ stg.) | 14,668 | 9,015 | 17,676 |
| Management time | (£ stg.) | 12,000 | 0 | 0 |
| Mitigation expenses | (£ stg.) | 6,667 | 6,248 | 12,251 |
| Totals | (KD) | 244,853 | 78,475 | 271,540 |
| | (£ stg.) | 185,740 | 162,985 | 319,578 |
| Total recommendation (US$) | | | | 591,118 |

# X. CLAIM OF DRESSER INDUSTRIES, INC.

443. Dresser Industries, Inc. ("Dresser") is a corporation incorporated under the laws of the State of Delaware, United States of America, which has operations in the oil field service and supply business.

444. Dresser claims that it held legal title to 65 drill bits that had been consigned to Dresser Industrial Co. Kuwait S.A.K. "Dresser Industrial" prior to 2 August 1990; at the time of Iraq's invasion of Kuwait the drill bits were located at certain premises of KOC in Kuwait and were intended to be sold to KOC on an "as needed" basis. Dresser claims that the drill bits were stolen by Iraqi military forces during their occupation of Kuwait. Dresser seeks compensation in the amount of US$342,819 for the resulting losses; such amount, it claims, represents the market value of the drill bits at the time they were stolen. Dresser's claim is as follows:

Table 17. Dresser net claim

| Loss element | Claim (US$) |
|---|---|
| Loss of drill bits | 342,819 |

445. Dresser has provided a list of the drill bits, certain witness evidence with respect to the circumstances of the claimed loss and certain invoices concerning the drill bits.

446. The Panel notes that, in support of its claim, Dresser has provided an affidavit of a Dresser employee who was in Kuwait at the relevant time. In this affidavit, the employee confirms that Dresser's drill bits were kept at the KOC location prior to 2 August 1990 and that no drill bits were at such location when he returned there immediately after the liberation of Kuwait. The employee did not, however, state how many drill bits were stolen from the KOC location during Iraq's occupation of Kuwait. Dresser claims that such information is included in a "list of Kuwait inventory written off October 1991" that has been provided. Because the list was prepared two years after the date of the claimed loss, the Panel asked Dresser to provide more contemporaneous evidence, such as records of inventory counts performed soon before Iraq's invasion of Kuwait, with respect to the location of the drill bits. In reply, Dresser stated that it was not able to provide such evidence. The Panel finds that, by itself, the "list of Kuwait inventory written off October 1991" does not prove that the drill bits were at the claimed location on 2 August 1990. Accordingly, the Panel finds that Dresser has provided insufficient evidence that, on the date of Iraq's invasion of Kuwait, the claimed number of drill bits were at the location from which Dresser claims they were stolen.

447. In addition, Dresser has not provided evidence, such as a price list or invoices for past sale, of the prices normally charged to KOC or other customers for drill bits at the time of Iraq's invasion of Kuwait. Instead, it has provided numerous invoices evidencing transfers of drill bits among Dresser and its subsidiaries. Because such invoices do not prove the market value of the drill bits, the Panel specifically asked Dresser to provide a price list or copies of invoices evidencing prices it charged customers for drill bits in 1990. Dresser has failed to provide any such evidence. The Panel therefore finds that Dresser has provided insufficient evidence with respect to the market value of the drill bits.

448. Because Dresser has not proved the location of the drill bits on the date of Iraq's invasion of Kuwait and their market value, the Panel finds that Dresser's claim must fail on evidentiary grounds and recommends that no compensation be awarded. The recommendation of the Panel is therefore as follows:

Table 18. Dresser recommended compensation

| Loss element | Claim (US$) | Recommendation (US$) |
|---|---|---|
| Loss of drill bits | 342,819 | 0 |

# XI. CLAIM OF NATIONAL-OILWELL

449. National-Oilwell ("NOW") is a limited partnership organized pursuant to the laws of the State of Delaware, United States of America. On 25 January 1990, NOW entered into a contract with North Oil Company of Iraq ("North Oil") pursuant to which NOW agreed to deliver two complete oil well work-over rigs to North Oil for a total purchase price of US$7,642,000, with payment to be made by Letter of Credit. NOW advances claims arising from the cancellation of this contract, which it claims was caused by Iraq's invasion and occupation of Kuwait. The total amount of NOW's claim (as per its amended claim) is US$1,531,428. This is summarized as follows:

Table 19. NOW net claims

| Loss element | Claim (US$) |
|---|---|
| Resale and cancellation costs | 907,636 |
| Loss of profit | 623,792 |
| Total | 1,531,428 |

450. Pursuant to the contract between NOW and North Oil, delivery of the first rig was to take place 8.5 months after the establishment by North Oil of a Letter of Credit for the purchase price, and delivery of the second rig was to take place 9 months after the establishment of a second such Letter of Credit. The first Letter of Credit was required to be opened no later than 90 days after the signing of the contract, and the second Letter of Credit was required to be opened no later than 90 days after the first.

451. The first Letter of Credit was opened in accordance with the contract. The second Letter of Credit was not opened. Nevertheless, NOW had ordered components for both rigs from its suppliers as at 2 August 1990, and had in fact received components for both rigs. NOW has advised the Panel that it was necessary to order components for both rigs notwithstanding that the second letter of credit was not yet in place in order to secure favourable pricing from NOW's suppliers, and this decision was taken based on a history of successful transactions with North Oil. The Panel finds this explanation to be reasonable.

### A. Resale and cancellation costs

452. It is clear from the materials filed with the Commission that NOW intended to order the majority of the necessary rig components from its suppliers, while providing some components out of its own inventory. NOW had commenced ordering the necessary components for the subject rigs as of 2 August 1990, and it claims that it was forced by Iraq's unlawful invasion and occupation of Kuwait to sell some such components already received at a loss, and to cancel other such orders. NOW claims that this resulted in

resale losses for components already acquired and cancellation charges levied by suppliers.

453. Specifically, NOW contends in its amended claim that it suffered a net loss of US$907,636 on the resale of components purchased from its suppliers, and in cancellation penalties.

454. In support of these contentions, NOW has provided a complete copy of the contract with North Oil, along with numerous invoices and correspondence showing the costs and cancellation penalties incurred by NOW, and the resale amounts achieved by NOW with respect to components that NOW had received. NOW has also provided affidavit evidence in support of the resale and cancellation claims.

455. With the assistance of its consultants and the secretariat, the Panel has reviewed all of the supporting material filed with the Commission by NOW. The Panel has been particularly concerned to verify original purchase amounts agreed between NOW and its suppliers, any cancellation charges imposed by those suppliers, and the resale values achieved by NOW. The Panel has also been concerned to verify that NOW took appropriate steps to mitigate its losses.

456. Taking into account the issues outlined above, the Panel finds that NOW has proved a net loss of US$358,835 in connection with goods manufactured by NOW's supplier Dreco Ltd. Similarly, the Panel finds that NOW has proved a net loss of US$378,500 in connection with goods manufactured by NOW's supplier Roberds Johnson. Finally, the Panel finds that NOW has proved a net loss of US$54,337 in connection with goods manufactured by NOW's supplier Gulf Power. The total net loss proved by NOW with respect to goods manufactured on its behalf is US$791,672.

457. The Panel finds that NOW has not proved any net loss with respect to the remainder of this loss element, relating to goods manufactured by NOW's suppliers Porta-Camp and PARMAC, or regarding cancellation fees charged by the suppliers Brandt, Halco or Century Business. The claims with respect to these suppliers were not supported by primary and contemporaneous documentation that would permit the Panel to assess or verify these losses.

458. Accordingly, the Panel recommends compensation in the amount of US$791,672 for resale and cancellation costs.

## B. Loss of profit

459. NOW argues that it lost profits of "approximately" US$623,792 as a result of the termination of this project. In support of this loss of profits claim, NOW provided to the Commission a profitability analysis on this contract, along with information on margins earned by the claimant during the time period in question on similar contracts.

460. The Panel recognizes that some of the profitability information provided by NOW is commercially sensitive and confidential, and that information will accordingly not be reviewed in this report in detail. The Panel finds that NOW has proved a loss of profits on the North Oil contract. In calculating such loss of profits, the Panel has referred to decision 9, which sets forth certain methods for the valuation of losses relating to income-producing property. The Panel finds that this loss of profits was not less than US$232,712. This figure was derived by applying the lowest potential profit percentages advanced by NOW as against the contract price adjusted for contingencies. As a result, the Panel recommends an award for loss of profits under the North Oil contract of US$232,712.

## C. Recommended award

461. In summary, the recommendations of the Panel are as follows:

Table 20. NOW recommended compensation

| Loss element | Claim (US$) | Recommendation (US$) |
|---|---|---|
| Contract losses - resale & cancellation costs | 907,636 | 791,672 |
| Contract losses - loss of profit | 623,792 | 232,712 |
| Total | 1,531,428 | 1,024,384 |

# XII. CLAIM OF OGE DRILLING INC.

462. OGE Drilling, Inc. ("OGE") is a closely-held corporation incorporated under the laws of the state of Texas, United States of America, which specializes in the provision of oil and gas drilling consulting services.

463. In 1984 OGE entered into a contract with KOC to second certain drilling personnel to KOC (the "Secondment Contract"); the term of such contract was later extended to 31 January 1991 by means of several adjustment orders. At the time of Iraq's invasion of Kuwait, 18 employees of OGE had been assigned to duties in Kuwait under the Secondment Contract.

464. OGE seeks compensation in the amount of US$415,911, net of interest and claim preparation costs, for losses suffered as a result of Iraq's unlawful invasion and occupation of Kuwait. OGE's claim is summarized as follows:

Table 21. OGE net claims

| Loss element | Claim (US$) |
|---|---|
| Loss of profit | 183,739 |
| Interest | 77,029 |
| Employee time | 68,978 |
| Office & professional expenses | 21,410 |
| Repatriation expenses | 3,706 |
| Insurance expenses | 41,849 |
| Relief payments | 19,200 |
| Total | 415,911 |

A. Loss of profit

465. OGE claims that due to Iraq's invasion and occupation of Kuwait it failed to earn revenues under the Secondment Contract between 2 August 1990 and the end of the term of the Secondment Contract; as a result, it lost US$183,739 in profits. Such amount represents profits projected by OGE to be earned under the Secondment Contract during that period minus estimated taxes payable to the Government of Kuwait; in calculating it, OGE relied on the assumption that, if the invasion of Kuwait had not occurred, 18 OGE employees would have continued to be seconded to KOC until the end of the term of the Secondment Contract.

466. OGE has provided copies of the Secondment Contract along with certain adjustment orders, monthly allocated income statements with respect to the Secondment Contract for the period between December 1989 and August 1990, a description of Kuwaiti income taxation, descriptions of salary and other expenses related to the Secondment Contract and an invoice with respect to

services provided to KOC by 18 OGE employees immediately prior to Iraq's invasion of Kuwait.

467. In considering OGE's loss of profits claim, the Panel has referred to decision 9, which sets forth certain methods for the valuation of losses relating to income-producing property. With the assistance of its consultants, the Panel has tested the reasonableness of OGE's claimed loss of profit through comparisons between historical information with respect to revenue and income earned under the Secondment Contract and the projections employed by OGE to calculate the magnitude of its loss. Based on the evidence provided and on this comparison, the Panel finds that it is reasonable to conclude that 18 employees of OGE would have continued to be seconded to OGE between 2 August 1990 and 31 January 1991 and that OGE has not overstated its claimed loss of profit. The Panel therefore recommends compensation in the claimed amount of US$183,739, without thereby finding that potential income tax liabilities should, as a rule, be deducted from a loss of profit award.

1. Post-occupation profits

468. In reply to a question from the Panel, OGE has stated that, after the liberation of Kuwait, OGE earned significant profits as a result of its participation in the reconstruction of Kuwait. The Panel finds that this was not work under the Secondment Contract that was deferred as a result of Iraq's unlawful invasion and occupation of Kuwait. In addition, the Panel notes that such work was of a different nature from that performed by OGE under the Secondment Contract.

469. The Panel finds that work performed by OGE in Kuwait during the post-liberation period was the result of a unique and temporary opportunity to provide highly specialized oil field services and supplies, including oil well firefighting activities. OGE sought and obtained work arising from this economic opportunity, as did many oil field supply and service companies, including companies that had previously conducted little or no work in the Persian Gulf. The Panel concludes that it would be incorrect to set off profits associated with the exploitation of this unique and temporary economic opportunity against losses suffered during the occupation of Kuwait, as those losses resulted from a decline in work of an essentially different nature from the work undertaken by these claimants in the post-liberation period.

470. In short, a reduction in any award to OGE based on post-liberation profits would, on the specific facts of those cases, be a finding that profits earned from an essentially new enterprise providing new products and services on the Kuwaiti market should be set off against losses suffered in OGE's traditional field of work. The Panel notes that such a finding would not be in keeping with traditional principles of mitigation.

471. The Panel specifically finds that its recommendations must:

> "... as far as possible, wipe out all the consequences of the illegal act and re-establish the situation which would in all probability, have existed if that act had not been committed." 33/

472. In this case, the consequences of Iraq's unlawful invasion and occupation of Kuwait on OGE would not be eliminated by a recommendation which included a deduction from OGE's claim based on revenue earned in a purely collateral way, largely from the deployment of capital not previously employed in the region, and in an essentially new enterprise. The Panel also specifically finds that OGE will not be unjustly enriched by the Panel's recommendations for the reasons outlined above, and because the post-liberation income was earned by OGE and resulted from large volumes of new work rather than unusual profit margins. 34/ The Panel finds that this income was in no way a windfall to OGE.

## B. Interest

473. OGE alleges that certain amounts due to it under the Secondment Contract were, as a result of Iraq's unlawful invasion and occupation of Kuwait, paid between 374 and 805 days late. OGE claims US$77,029 in lost interest for such delays.

474. OGE has stated that such amount was calculated with reference to the "prime rate", beginning 31 days after the date of the relevant invoice and ending on the day of payment of such invoice. OGE has provided a list of such overdue payments copies of invoices addressed to KOC covering services provided under the Secondment Contract and copies of bank statements evidencing receipt of some of the amounts paid late.

475. The Panel notes that OGE has not provided evidence that KOC was contractually required to pay the amounts allegedly paid late on the stated due dates. In addition, OGE has not provided evidence that the "prime rate" with reference to which its claimed interest loss was calculated corresponded to financing costs actually incurred by OGE or to a return that OGE would have earned on the sum paid late if it had been received on time.

476. Accordingly, the Panel finds that OGE's claim for lost interest must fail on evidentiary grounds and recommends that no compensation be awarded. The Panel makes no finding on whether OGE's claimed interest would have been compensable if it had been adequately proven.

C. Employee time

477. OGE also seeks compensation in the amount of US$68,978, plus claim preparation costs of US$9,302, for time spent by three of its employees on matters related to the termination of the Secondment Contract as a result of Iraq's unlawful invasion and occupation of Kuwait. Such matters allegedly included the provision of assistance to former employees and their families, attempts to recover amounts owed to OGE under the Secondment Contract, the defence of OGE in a lawsuit brought by a former employee who had been held hostage by Iraqi forces and the preparation of OGE's claim before the Commission.

478. OGE has not claimed that it incurred extraordinary expenses to compensate employees for additional work caused by Iraq's occupation of Kuwait. Instead, it has stated its claimed loss as a percentage of the existing salaries of the relevant employees and corresponding payroll taxes.

479. The Panel finds that, notwithstanding the question of whether it occurred and was a direct result of Iraq's invasion and occupation of Kuwait, any additional work performed by OGE employees does not constitute a compensable loss as it did not cause OGE to bear a corresponding additional expense. Accordingly, the Panel recommends that no compensation be awarded with respect to this loss element.

D. Office and professional expenses

480. OGE claims that it incurred US$21,410 in office and professional expenses as a result of Iraq's occupation of Kuwait and the termination of the Secondment Contract. Of such amount, US$7,001 represents office expenses including postage, telephone and supplies, and US$14,409 represents professional expenses including legal, accounting and consulting fees.

1. Office expenses

481. OGE has provided to the Commission numerous invoices with respect to the claimed office expenses; it has not, however, provided detailed explanations for such expenses. The Panel has not therefore been able to determine whether these were incurred as a direct result of Iraq's invasion and occupation of Kuwait.

482. Accordingly, the Panel recommends that no compensation be awarded for OGE's claimed office expenses.

2. Professional expenses

483. OGE's claimed professional expenses include legal costs incurred to defend OGE in a lawsuit brought by a former employee who was taken hostage in Kuwait, to prepare a letter to relatives of OGE employees taken hostage in Kuwait and to research certain insurance requirements with respect to workmens' compensation coverage of employees in the Middle East. Other professional expenses were incurred for advice with respect to the collection and tax implications of amounts owed by KOC.

484. OGE has provided several law and accounting firm fee statements as evidence of professional fees incurred.

485. The Panel notes that OGE has stated that it dismissed all employees seconded to KOC upon Iraq's invasion of Kuwait. In the absence of evidence to the contrary, the Panel deduces from this that legal fees incurred to prepare a letter to the relatives of former employees held hostage in Kuwait and to research other matters related to employees were more directly caused by OGE's desire to avoid any negative legal repercussions of its decision to terminate the employment of its seconded employees than by Iraq's unlawful invasion and occupation of Kuwait.

486. The Panel also finds that OGE has not provided sufficient evidence that legal expenses incurred to defend OGE against a lawsuit brought by a former employee were a direct result of Iraq's unlawful invasion and occupation of Kuwait rather than of other factors. In addition, the Panel finds that OGE has not provided sufficient details on how professional fees with respect to the collection and tax implications of amounts owed by KOC were incurred, and that it has not stated or provided evidence of how these resulted from Iraq's invasion and occupation of Kuwait.

487. Accordingly, the Panel recommends that no compensation be awarded for OGE's claimed professional expenses.

E. Repatriation expenses

488. OGE claims that after the invasion of Kuwait by Iraq it was forced to pay certain expenses associated with the repatriation of employees from Kuwait. OGE was later reimbursed pursuant to the Secondment Contract by KOC for a portion of such expenses; it is seeking compensation in the amount of US$3,706 for the remainder.

489. In support of this portion of its claim, OGE has provided several invoices and receipts with respect to repatriation expenses and a letter from KOC stating which of such expenses would be reimbursed by KOC. OGE has not, however, reconciled invoices and receipts to amounts not reimbursed by KOC and explained why such amounts were not reimbursed.

490. The Panel finds that OGE has not provided a sufficiently detailed explanation of the claimed expenses or an explanation as to why these expenses were not reimbursed by KOC. The Panel accordingly recommends that no compensation be awarded with respect to this loss element.

## F. Insurance expenses

491. OGE claims that, although it terminated the employment of employees assigned to work under the Maintenance Contract in Kuwait on 2 August 1990, it continued to pay certain medical, life, workers' compensation and general liability insurance expenses of all such employees until the end of August 1990; OGE covered the cost of such insurance for employees that were detained as hostages in Iraq and Kuwait until their release in April of 1991. OGE claims US$41,849 for such insurance expenses, in support of which it has provided invoices for insurance and workers' compensation coverage.

492. The Panel finds that, because the claimed insurance expenses relate to OGE employees seconded to KOC, these represented part of the costs of OGE's performance under the Secondment Contract. In considering OGE's loss of profits claim (see paras. 465-467, supra) the Panel has already found that, as a result of Iraq's unlawful invasion and occupation of Kuwait, OGE did not earn revenues under the Secondment Contract between 2 August 1990 and the end of the term of the Secondment Contract. As insurance expenses would have been paid out of such revenues, the Panel finds that proven insurance expenses incurred between 2 August 1990 and the end of the term of the Secondment Contract are compensable to the extent that OGE would not already be compensated for them by means of the Panel's recommended loss of profits award. The Panel notes that it has found that OGE has not overstated the magnitude of its claimed loss of profits and has recommended that compensation in the claimed amount be awarded with respect to it.

493. The Panel notes that, in calculating its claimed loss of profit under the Secondment Contract, OGE subtracted from anticipated revenues certain general and administrative expenses related to the Secondment Contract. Without specifying their magnitude, OGE has stated that the subtracted general and administrative expenses included certain employee insurance expenses; these were, notwithstanding Iraq's invasion and occupation of Kuwait, actually incurred. Based on a review of OGE's allocated financial statements, the Panel has, with the assistance of its consultants, determined that the insurance expenses subtracted from projected revenues in the calculation of OGE's claimed loss of profit were equal to US$12,656.00.

494. The Panel finds that the documentary evidence provided confirms that OGE incurred at least US$12,656 in insurance expenses with respect to employees seconded to KOC between 2 August 1990 and the end of the term of the Secondment Contract.

495. However, the Panel notes that the employee insurance expenses claimed by OGE exceed US$12,656. As OGE has only subtracted US$12,656 in insurance expenses from its loss of profits claim, an award in excess of US$12,656 would result in overcompensation. The Panel finds this to be correct whether OGE charged the insurance expenses in excess of US$12,656 against revenues from the Secondment Contract or to another account. Accordingly, the Panel recommends an award of US$12,656 for employee insurance expenses incurred during the term of the Secondment Contract.

496. The Panel notes that another portion of the claimed employee insurance expenses relates to coverage of hostage employees after the end of the term of the Secondment Contract. With the assistance of its consultants, the Panel has determined that such portion is equal to US$7,275. The Panel finds that such expenses were incurred as a result of Iraq's unlawful invasion and occupation of Kuwait. In addition, because the employee insurance expenses proved to have been incurred after the end of the term of the Secondment Contract were not a cost of performance under the Secondment Contract, the Panel finds that they are compensable under this heading.

497. Accordingly, the Panel recommends compensation in the amount of US$12,656 for employee insurance expenses incurred during the term of the Secondment Contract and US$7,275 for employee insurance expenses incurred after the end of the term of the Secondment Contract.

## G. Relief payments

498. Finally, OGE seeks compensation in the amount of US$19,200 for relief payments made to the families of employees detained as hostages in Iraq and Kuwait. In support of this component of its claim OGE has provided copies of six bank cheques representing such relief payments.

499. The Panel finds that the OGE has provided adequate evidence of such relief payments and recommends that compensation in the amount of US$19,200 be awarded.

## H. Recommended award

500. In summary, the recommendations of the Panel are as follows:

Table 22. OGE recommended compensation

| Loss element | Claim (US$) | Recommendation (US$) |
|---|---|---|
| Loss of profit | 183,739 | 183,739 |
| Interest | 77,029 | 0 |
| Employee time | 68,978 | 0 |
| Office & professional expenses | 21,410 | 0 |
| Repatriation expenses | 3,706 | 0 |
| Insurance expenses | 41,849 | 19,931 |
| Relief payments | 19,200 | 19,200 |
| Total | 415,911 | 222,870 |

## XIII. INCIDENTAL ISSUES

### A. Currency exchange rate

501. The Panel notes that several of the claimants have advanced claims in currencies other than United States dollars. The Panel has assessed all such claims, and performed all claim calculations, in the original claim currencies. However, the Commission issues its awards in United States dollars. Accordingly, the Panel is required to determine the appropriate rate of exchange to apply to losses expressed and assessed in currencies other than United States dollars.

502. The Panel also notes that all prior Commission compensation awards have relied upon the United Nations Monthly Bulletin of Statistics for determining commercial exchange rates into United States dollars. The Panel adopts that approach for this report.

503. In the circumstances, the Panel finds that the appropriate currency exchange rate to be applied to the claims advanced in the Third Instalment in currencies other than the United States dollar is the rate prevailing on the date of loss, as outlined in section XIII.B (infra). 35/

504. In the body of this report, the Panel has prepared a claim summary chart for each claimant, which appears at the conclusion of the Panel's assessment of each claim. Where claimants have advanced claims in currencies other than United States dollars, the Panel has converted those claims into United States dollars in the claim summary charts, based on the approach outlined above.

### B. Interest

505. All claim figures in the body of this report are net of any individual interest claims advanced by the claimants.

506. In accordance with Governing Council decision 16, "[i]nterest will be awarded from the date the loss occurred until the date of payment, at a rate sufficient to compensate successful claimants for the loss of use of the principal amount of the award." In decision 16, the Governing Council further specified that "[i]nterest will be paid after the principal amount of awards," while postponing a decision on the methods of calculation and payment of interest.

507. The task of the Panel, therefore, is to determine the date from which interest will run for successful claimants in the Third Instalment.

508. In each case where a precise date of loss is apparent or discernable, the Panel recommends that precise date as the date from which interest will run.

509. In some cases, a precise date of loss cannot be established. In those cases, the Panel has been guided by the "E2" Report. In particular, where the claim is for a loss of profits where that loss was incurred regularly over a period of time, the Panel has selected the mid-point of those losses. Further, where the claim is for a loss of tangible assets, the Panel has selected 2 August 1990 (the date of Iraq's unlawful invasion and occupation of Kuwait) as the date of the loss, as that coincides with the claimants' date of loss of control over the assets in question. The Panel has also been guided by the "F1" Report. In particular, the Panel finds that 16 November 1990 (the mid-point of the occupation of Kuwait) is the appropriate date where losses were suffered or extraordinary expenses were paid regularly throughout the period of Iraq's occupation of Kuwait.

510. In the case of Mitsubishi, the Panel has recommended that awards be made with respect to 15 loss elements that belong to several loss types. While the Panel was able to estimate that Mitsubishi's compensable losses occurred between 2 August 1990 and 30 January 1991, it was not, in the case of several loss elements, able to establish precise loss dates. After due consideration, the Panel selects 31 October 1990, the mid-point of the period over which Mitsubishi's compensable losses occurred, as the date from which interest is to run.

511. In accordance with these determinations, the following is a summary of the recommendations for compensation of the Panel, along with a date from which interest awards will run:

Table 23. Third instalment claims -

Summary of recommendations by loss type with interest start dates

| Name of claimant and loss element | US$ award amount | Interest start date |
|---|---|---|
| Genoyer SA | | |
| compensation paid to others | 12,911 | 31 October 1990 36/ |
| Mitsubishi Corporation | | |
| all loss elements | 1,808,263 | 31 October 1990 |
| Dowell Schlumberger (Middle East) Inc. | | |
| unpaid accounts receivable | 208,382 | 21 January 1992 37/ |
| Shafi Bin Jaber & Bro's Co. | | |
| loss of profit | 404,985 | 24 March 1991 |
| machinery | 3,745,754 | 2 August 1990 |
| tools and instruments | 3,738 | 2 August 1990 |
| tyres | 29,864 | 2 August 1990 |
| the Portables and their contents | 38,473 | 2 August 1990 |
| financial obligations with respect to real property | 115,265 | no interest 38/ |
| Cape East Limited | | |
| loss of tangible property | 29,909 | 2 August 1990 |
| evacuation costs | 37,819 | 17 December 1990 39/ |
| Halliburton Company | | |
| decline in operating income | 1,051,000 | 1 December 1990 |
| Halliburton Geophysical Services, Inc. | | |
| compensation paid to others | 315,613 | 16 November 1990 |
| contract losses | 11,891,914 | 20 May 1992 40/ |
| Halliburton Logging Services, Inc. | | |
| contract losses | 1,465,751 | 16 November 1990 |
| Otis Engineering Corporation | | |
| compensation paid to others | 465,213 | 16 November 1990 |
| loss of tangible property | 83,798 | 2 August 1990 |
| bank accounts, securities and other intangibles | 307,455 | 16 November 1990 |

| Name of claimant and loss element | US$ award amount | Interest start date |
|---|---|---|
| Halliburton Limited | | |
| decline in operating income | 965,286 | 7 January 1991 |
| compensation paid to others | 552,020 | 16 November 1990 |
| loss of tangible property | 989,213 | 2 August 1990 |
| Wood Group Engineering Ltd. | | |
| all loss elements | 591,118 | 25 January 1991 41/ |
| Dresser Industries Inc. | 0 | not applicable |
| National-Oilwell | | |
| resale and cancellation costs | 791,672 | 1 December 1990 42/ |
| loss of profit | 232,712 | 1 March 1991 43/ |
| OGE Drilling Inc. | | |
| loss of profit and insurance expenses | 203,670 | 1 December 1990 44/ |
| relief payments | 19,200 | 4 September 1990 45/ |

## C. Claim preparation costs

512. All claim figures in the body of this report are net of any individual claim preparation cost claims advanced by the claimants.

513. In a letter dated 6 May 1998, the Panel was notified by the Executive Secretary of the Commission that the Governing Council intends to resolve the issue of claim preparation costs at a future date. Accordingly, the Panel takes no action with respect to claims for such costs.

## XIV. RECOMMENDATIONS

514. The following table is a summary showing net claims and the Panel's recommended awards.

Table 24. Summary showing net claims and the Panel's recommended awards

| Claimant | | Net Claim* | Recommendation (Original currencies) | Recommendation (US$) |
|---|---|---|---|---|
| Genoyer | (FF) | 67,535,458 | 566 | 111 |
| | (US$) | 289,553 | 12,800 | 12,800 |
| | (ID) | 8,424,477 | 0 | 0 |
| | | | Sub-total | 12,911 |
| Mitsubishi | (yen) | 12,968,598,047 | 174,197,011 | 1,346,711 |
| | (US$) | 6,581,436 | 461,552 | 461,552 |
| | | | Sub-total | 1,808,263 |
| Dowell | (US$) | 1,591,315 | 208,382 | 208,382 |
| Shafco | (SRl) | 31,270,628 | 16,246,104 | 4,338,079 |
| Cape | (US$) | 759,000 | 37,819 | 37,819 |
| | (£ stg.) | 50,096 | 0 | 0 |
| | (KD) | 10,465 | 0 | 0 |
| | (Dh) | | 109,797 | 29,909 |
| | | | Sub-total | 67,728 |
| Halliburton Company | (US$) | 1,454,549 | 1,051,000 | 1,051,000 |
| Halliburton Geophysical | (US$) | 12,687,588 | 12,207,527 | 12,207,527 |
| Halliburton Logging | (US$) | 3,990,436 | 1,465,751 | 1,465,751 |
| Otis Engineering | (US$) | 5,709,165 | 856,466 | 856,466 |
| Halliburton Limited | (US$) | 11,760,675 | 2,506,519 | 2,506,519 |
| Wood Group | (KD) | 244,853 | 78,475 | 271,540 |
| | (£ stg.) | 185,740 | 162,985 | 319,578 |
| | | | Sub-total | 591,118 |
| Dresser | (US$) | 342,819 | 0 | 0 |
| NOW | (US$) | 1,531,428 | 1,024,384 | 1,024,384 |
| OGE | (US$) | 415,911 | 222,870 | 222,870 |
| Totals | (FF) | 67,535,458 | 566 | 111 |
| | (US$) | 47,113,875 | 20,055,070 | 20,055,070 |
| | (ID) | 8,424,477 | 0 | 0 |
| | (yen) | 12,968,598,047 | 174,197,011 | 1,346,711 |
| | (SRl) | 31,270,628 | 16,246,104 | 4,338,079 |
| | (£ stg.) | 235,836 | 162,985 | 319,578 |
| | (KD) | 255,318 | 78,475 | 271,540 |
| | (Dh) | 0 | 109,797 | 29,909 |
| Total recommendation ( US$) | | | | 26,360,998 |

*The total in United States dollars of amounts claimed in the Third Instalment, with claims stated in amounts other than United States dollars converted at the 1 August 1990 average monthly rate as reported in the United Nations Monthly Bulletin of Statistics, is US$186,671,158.

Geneva, 19 March 1999

(Signed) Mr. Allan Philip
Chairman

(Signed) Judge Bola Ajibola
Commissioner

(Signed) Mr. Antoine Antoun
Commissioner

Notes

1/ "Provisional Rules for Claims Procedure" (S/AC.26/1992/10).

2/ "Criteria For Additional Categories of Claims" (S/AC.26/1991/7/Rev.1) ("decision 7").

3/ "Compensation for Business Losses Resulting from Iraq's Unlawful Invasion and Occupation of Kuwait where the Trade Embargo and Related Measures were also a Cause" (S/AC.26/1992/15), para. 6 ("decision 15"). Decision 15 emphasizes that for an alleged loss or damage to be compensable, "the causal link must be direct" (para. 3).

4/ "Propositions and Conclusions on Compensation for Business Losses: Types of Damages and Their Valuation" (S/AC.26/1992/9) ("decision 9"). Decision 9 discusses the three main general categories of loss types that prevail among the category "E" claims: losses in connection with contracts, losses relating to tangible assets and losses relating to income-producing properties.

5/ Decision 15, para. 5.

6/ "United Nations Compensation Commission Claim Form for Corporations and Other Entities (Form E): Instructions for Claimants", ("Form E") para. 6. This requirement is repeated at article 35, para. 1 of the Rules.

7/ Form E, para. 6.

8/ Genoyer claims FF 3,800,000 for this loss element. In response to a question from the Panel, Genoyer advised that this was calculated as 10 per cent of a total contract amount of FF 36,500,000. Genoyer has not sought to amend its claim to FF 3,650,000, nor has it explained the discrepancy between this figure and the amount claimed.

9/ Decision 7, para. 34(b).

10/ "Report and Recommendations made by the Panel of Commissioners Concerning Part One of the First Instalment of Claims by Governments and International Organizations (Category "F" Claims)" (S/AC.26/1997/6) (hereinafter referred to as the "first 'F1' Report"), paras. 24-25.

11/ Decision 7, para. 34(b).

12/ Decision 7, para. 34(c).

13/ First 'F1' Report , para. 94.

14/ Ibid., paras. 95-96.

15/ Ibid.

16/ See, also, "Report and Recommendations made by the Panel of Commissioners Concerning the Third Instalment of 'F1' Claims" (S/AC.26/1999/7) para. 123, in which the "F1" Panel reaffirmed its finding that "compensation will only be recommended for claims for [proven] costs incurred in evacuating individuals from Kuwait, Iraq, Israel and Saudi Arabia."

17/ Decision 9, para. 6.

18/ The rate of exchange for the conversion of Japanese yen to United States dollars used as at 1 August 1990 is the average monthly rate as reported in the United Nations Monthly Bulletin of Statistics, Vol. XLV, No. 4, April 1991.

19/ Rules, article 6, para. 5.

20/ The "E2" Report, paras. 193-197. Performance with respect to retention monies occurs, for the purpose of the determination of when a debt of Iraq arose, when the conditions precedent for its release have been satisfied.

21/ Together, the claimed amounts stated herein are equivalent to £ stg. 458,261, the net amount claimed by Cape.

22/ The amount recommended by the Panel is slightly less than the amount claimed based on exchange rates prevailing as of the date of the debit note.

23/ This is a corrected figure; the claimant's net total of US$3,996,166.00 contains two errors which have been corrected by the secretariat.

24/ The claimant's original net figure was US$11,735,341. This figure has been adjusted upwards by US$25,334 to include the portion of the interest claims that is not for interest on an award, but rather for loss of use of funds; see para. 393.

25/ Factory at Chorzów case, Merits, Judgement No. 13, 1928, P.C.I.J., Series A, No. 17, p.47.

26/ See British Claims in the Spanish Zone of Morocco case, Decision of 1 May 1925 (United Kingdom v. Spain) United Nations Report of International Arbitral Awards, vol. II, p. 615 et seq. for an example of the application of a deduction from a claim based on principles of unjust enrichment.

27/ The "E2" Report, para. 90. The "E2" Panel specifically stated that "performance" for purposes of determining the jurisdiction of the Commission "... can mean complete performance under a contract, or partial performance, so long as an amount was agreed to be paid for that portion of completed partial performance.

28/ The "E2" Report, paras. 136-140.

29/ The "E2" Report, para. 90. The "E2" Panel specifically stated that "performance" for purposes of determining the jurisdiction of the Commission "... can mean complete performance under a contract, or partial performance, so long as an amount was agreed to be paid for that portion of completed partial performance.

30/ The "E2" Report, paras. 136-140.

31/ Ibid.

32/ Together, the claimed amounts stated herein are equivalent to £ stg. 675,446, the total amount, net of claim preparation costs, claimed by Wood Group.

33/ Factory at Chorzów case, Merits, Judgement No. 13, 1928, P.C.I.J., Series A, No. 17, p.47.

34/ See British Claims in the Spanish Zone of Morocco case, Decision of 1 May 1925 (United Kingdom v. Spain) United Nations Report of International Arbitral Awards, vol. II, p. 615 et seq. for an example of the application of a deduction from a claim based on principles of unjust enrichment.

35/ The United Nations Monthly Bulletin of Statistics Currency conversion rates are the mid-point rates prevailing for each month.

36/ This date is the date on which the largest portion of the expenses were incurred.

37/ This date is 540 days after the issuance of the middle of the three compensable invoices, in accordance with the invoice due date.

38/ As discussed in para. 271, supra, Shafco's debt under the Financing Contract has been rescheduled to an unspecified date. The rescheduling agreement between Shafco and the lender does not state that Shafco will be charged interest on the amount owed to the lender. Because the lender is the ultimate beneficiary of any award with respect to this loss element and would not have been paid interest on the amount owed to it by Shafco, the Panel finds that no interest on the recommended award is required in this case.

39/ This is the date of the applicable debit note.

40/ The largest portion of this loss element represents payments that were to be made in 3 equal semi-annual instalments commencing 20 November 1991. The date selected is the middle of these 3 payment dates.

41/ This date is the estimated mid-point of the period over which Wood Group's compensable losses were incurred.

42/ This date is the estimated mid-point of the period over which OGE's profit and insurance losses were incurred.

43/ This is the estimated date on which NOW would have received payment.

44/ This date is the estimated mid-point of the period over which OGE's profit and insurance losses were incurred.

45/ This is the date when the relief payments were made.

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